SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71177; File No. SR–Phlx–2013–106]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Rules 1064 and 1080 to More Specifically Address the Number and Size of Counterparties to a Qualified Contingent Cross Order

December 23, 2013.

On October 23, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') 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 Rules 1064 and 1080 to more specifically address the number and size of counterparties to a Qualified Contingent Cross Order (''QCC Order''). The proposed rule change was published for comment in the **Federal Register** on November 13, 2013.[3] The Commission received two comment letters on this proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 28, 2013. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider this proposed rule change, including the Comment Letters that have been submitted in connection with this proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 11, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–Phlx–2013–106).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31132 Filed 12–27–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71178; File No. SR–CBOE–2013–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Its Rules Regarding Option Orders That Include a Stock Component

December 23, 2013.

On October 31, 2013, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE's rules regarding option orders that include a stock component. The proposed rule change was published for comment in the **Federal Register** on November 19, 2013.[3] The Commission received two comment letters regarding the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 3, 2014. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change and the comment letters that have been submitted in connection with this proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 17, 2014, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2013–107).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31133 Filed 12–27–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71175; File Nos. SR–NYSE–2013–21; SR–NYSEMKT–2013–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Approving Proposed Rule Changes Amending NYSE Rule 104 and NYSE MKT Rule 104—Equities, Each as Modified by an Amendment No. 1, To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers, To Make Exchange Systems Available to DMMs That Would Provide DMMs With Certain Market Information, To Amend the Exchanges' Rules Governing the Ability of DMMs To Provide Market Information to Floor Brokers, and To Make Conforming Amendments to Other Rules

December 23, 2013.

I. Introduction

On April 9, 2013, the New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') (collectively, ''Exchanges'') each filed with the

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70821 (November 6, 2013), 78 FR 68126.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Benjamin R. Londergan, Chief Executive Officer, Group One Trading, L.P., dated December 2, 2013 (''Group One Letter'') and Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange Incorporated, dated December 13, 2013 (''CBOE Letter'') (collectively, the ''Comment Letters'').

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70857 (November 13, 2013), 78 FR 69487.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, dated December 10, 2013; and Ellen Greene, Vice President, Securities Industry and Financial Markets Association, dated December 16, 2013.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

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] proposed rule changes (''Proposals'') to amend certain of their respective rules relating to Designated Market Makers (''DMMs'') [3] and Floor brokers.

The Proposals were published for comment in the **Federal Register** on April 29, 2013.[4] The Commission received two comment letters on the NYSE proposal.[5] On June 11, 2013, the Commission extended until July 26, 2013 the time period in which to approve, to disapprove, or to institute proceedings to determine whether to disapprove the Proposals.[6] On July 26, 2013, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the Proposals.[7] During the course of these proceedings, the Commission received one additional comment letter [8] and two responses from the Exchanges.[9] This order approves the Proposals.

II. Background

The Proposals seek to amend the Exchanges' rules in four ways. First, the Exchanges propose to codify certain trading floor functions that may be performed by DMMs. Second, the Exchanges propose to allow DMMs to access Exchange systems that would provide DMMs with additional order information about the securities in which they are registered. Third, the Exchanges propose to make certain conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems and to specify what information about Floor broker agency interest files (''e-Quotes'') is available to the DMM. Finally, the Exchanges propose to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and others.[10]

A. Trading Floor Functions

The Exchanges propose to codify certain traditional Trading Floor functions that were formerly performed by specialists and were described in each Exchange's respective Floor Official Manual.[11] The proposed rules would specify four categories of trading floor functions that DMMs could perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel, including managing trading crowd activity and facilitating Floor broker executions at the post; [12] (2) facilitating Floor broker interactions, including either participating as a buyer or seller, and appropriately communicating to Floor brokers the availability of other Floor broker contra-side interest; [13] (3) assisting Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker; [14] and (4) researching the status of orders or questioned trades.[15]

B. DMM Access to Additional Order Information

Each Exchange proposes to make available to a DMM at his or her post Exchange systems that display the following types of information about securities in which the DMM is registered: (1) Aggregated information

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

[2] 17 CFR 240.19b–4.

[3] NYSE Rule 98(b)(1) defines the term ''DMM'' to mean any individual qualified to act as a DMM on the floor of the Exchange under NYSE Rule 103. ''DMM unit'' means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit. NYSE Rule 98(b)(2). *See also* NYSE MKT Rule 2(i)—Equities (defining the term ''DMM'' to mean an individual member, officer, partner, employee, or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM); NYSE MKT Rule 2(j)—Equities (defining the term ''DMM unit'' as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE MKT Rule 98—Equities).

[4] *See* Securities Exchange Act Release Nos. 69427 (Apr. 23, 2013), 78 FR 25118 (SR–NYSE–2013–21) (''NYSE Notice'') and 69428 (Apr. 23, 2013), 78 FR 25102 (SR–NYSEMKT–2013–25) (''NYSE MKT Notice'') (collectively ''Notices''). On April 18, 2013, each of the Exchanges filed a Partial Amendment No. 1 to its Proposal. The purpose of the amendments was to file Exhibit 3, which was not included in the Notices.

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Daniel Buenza, Lecturer in Management, London School of Economics, and Yuval Millo, Professor of Social Studies of Finance, University of Leicester (May 20, 2013) (''LSE Letter I''); Letter to Commission from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business (May 14, 2013) (''Angel Letter''). Although these comment letters addressed only the NYSE proposal explicitly, the Proposals are nearly identical. For this reason, this order addresses both Proposals when discussing these comment letters.

[6] *See* Securities Exchange Act Release Nos. 69736, 78 FR 36284 (June 17, 2013) (SR–NYSE–2013–21); and 69733, 78 FR 36284 (June 17, 2013) (SR–NYSEMKT–2012–25).

[7] *See* Securities Exchange Act Release No. 70047, 78 FR 46661 (Aug. 1, 2013).

[8] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Daniel Buenza, Lecturer in Management, London School of Economics, and Yuval Millo, Professor of Social Studies of Finance, University of Leicester (Aug. 22, 2013) (''LSE Letter II'').

[9] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP and Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext (Sept. 5, 2013) (''Response Letter I''); Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP and Corporate Secretary, General Counsel, NYSE Markets, NYSE Euronext (Dec. 6, 2013) (''Response Letter II'') (together with Response Letter I, the ''Response Letters'').

[10] On October 31, 2011, NYSE and NYSE Amex LLC (the predecessor entity of NYSE MKT) (''NYSE Amex'') each filed with the Commission a proposed rule change to amend the exchange's Rule 104 (''2011 Proposals'') that proposed similar changes to the relevant rules as the Proposals. The 2011 Proposals were published for comment in the **Federal Register** on November 17, 2011. *See* Securities Exchange Act Release Nos. 65735 (Nov. 10, 2011), 76 FR 71405 (SR–NYSEAmex–2011–86) (''NYSE Amex Notice'') and 65736 (Nov. 10, 2011), 76 FR 71399 (SR–NYSE–2011–56) (''NYSE Notice''). The Commission received no comment letters on the Proposals. On December 22, 2011, the Commission extended to February 15, 2012 the time period in which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the 2011 Proposals. *See* Securities Exchange Act Release No. 66036, 76 FR 82011 (Dec. 29, 2011). The Commission received no comment letters on the 2011 Proposals during the extension. On February 15, 2012, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the 2011 Proposals. *See* Securities Exchange Act Release No. 66397, 77 FR 10586 (Feb. 22, 2012). After instituting proceedings, the Commission received six comment letters supporting the 2011 Proposals. After the Commission issued a notice of designation of longer period for Commission action on May 14, 2012, *see* Securities Exchange Act Release No. 66981, 77 FR 29730 (May 18, 2012), the Commission disapproved the 2011 Proposals on July 13, 2012. *See* Securities Exchange Act Release No. 67437, 77 FR 42525 (July 13, 2012) (''Disapproval Order'').

[11] *NYSE 2004 Floor Official Manual, Market Surveillance,* Chapter Two, Sec. I. at 7–12 (June ed. 2004). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 to the Exchanges' filings.

[12] *See id.* at Sec. I.A., p. 7 (noting that ''specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities'').

[13] *See id.* at Sec. I.B.3., pp. 10–11 (''In opening and reopening trading in a listed security, a specialist should . . . [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate'' and ''[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary.'').

[14] *See id.* at Sec. I.B.4., p. 11 (''In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should . . . [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.'').

[15] *See id.* at Sec. I.B.5., p. 12 (providing that a specialist should ''[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors'').

about buying and selling interest; [16] (2) disaggregated information about the price and size of any individual order or e-Quote and the entering and clearing firm information for these orders, except that Exchange systems would not make available to DMMs any disaggregated information about an order or e-Quote that a market participant has elected not to display to a DMM; and (3) post-trade information.[17] The disaggregated information to be made available to each DMM concerning the securities in which the DMM is registered would include: (a) The price and size of all displayable interest submitted by off-Floor participants (although off-Floor participants may submit non-displayable interest that is hidden from the DMM); [18] and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[19] According to the Exchanges, the systems would not contain any information about the ultimate customer (*i.e.,* the name of the member or member organization's customer) in an order or transaction.

C. Conforming Amendments To Reflect the Additional Order Information To Be Made Available to DMMs Through Exchange Systems and to Specify Floor Broker e-Quote Information To Be Made Available to DMMs

The Exchanges also propose to make conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems and to specify what information about e-Quotes is available to the DMM in a given security. Specifically, the Exchanges propose to revise NYSE Rule 70 and NYSE MKT Rule 70—Equities governing e-Quotes to reflect that disaggregated order information regarding a given security would be available to the DMM for that security except as elected otherwise. The Exchanges would allow a Floor broker to enter an e-Quote with reserve interest (''Reserve e-Quote'') with or without a displayable portion.

A Reserve e-Quote with a displayable portion would participate in manual and automatic executions. Trading interest at each price point, including the reserve portion of the Reserve e-Quote, would be included in the aggregate interest available to the DMM. This trading interest at each price point would also be available to the DMM on a disaggregated basis, unless the Floor broker chooses to exclude the Reserve e-Quote with a displayable portion from the DMM.

A Reserve e-Quote with an undisplayable portion would also participate in manual and automatic executions. As with the Reserve e-Quote with a displayable portion, trading interest at each price point represented by the Reserve e-Quote with an undisplayable portion would be included in the aggregated and disaggregated interest available to the DMM, unless the Floor broker chooses to exclude the Reserve e-Quote from the DMM. If, however, the Floor broker chooses to exclude the Reserve e-Quote with an undisplayable portion from the DMM, then the DMM would not have access to the trading interest represented by the Reserve e-Quote on either an aggregated or disaggregated basis, and the Reserve e-Quote would not participate in manual executions.

In addition, the Exchanges propose to delete their existing rules that currently prohibit DMMs from using the Display Book system to access information about e-Quotes excluded from the aggregated agency interest and Minimum Display Reserve Order information except for the purpose of effecting transactions that are reasonably imminent and where the Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect the transactions.[20]

D. Ability of DMMs To Provide Market Information on the Trading Floor

The Exchanges also propose to modify the circumstances under which DMMs would be permitted to provide market information to Floor brokers and visitors on the trading floor. Specifically, the proposed rules would permit a DMM to provide such information to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the trading floor for the purpose of demonstrating methods of trading. Accordingly, a Floor broker would be able to ask a DMM for disaggregated order information that market participants have not otherwise elected to be hidden from the DMM. A Floor broker would not be able to submit such an inquiry by electronic means, and the DMM's response containing market information could not be delivered through electronic means.

Because the Proposals expand on and incorporate the Exchanges' current rules regarding the disclosure of order information by DMMs, the Exchanges are proposing to delete those rules.[21] The current rules provide that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the trading floor. This aspect of the current rules is replicated in the proposed rules. Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System (''ITS''). According to the Exchanges, this text is obsolete, as the ITS Plan has been eliminated, and therefore the Exchanges are proposing to delete it. Third, a DMM may, while acting in a market-making capacity and in response to an inquiry from a member conducting a market probe in the normal course of business, provide information about buying or selling interest in the market, including (a) aggregated buying or selling interest contained in Floor broker agency interest files, other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders, and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule (''CCS'') interest as described in Rule 1000(c).

The proposed rules would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs are permitted to provide under current rules, but also with the disaggregated and post-trade

[16] Exchange systems currently make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-floor participants; (b) all Minimum Display Reserve orders, including the reserve portion; (c) all displayable floor broker agency interest files (''e-Quotes''); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the floor broker elects to exclude that reserve quantity from availability to the DMM.

[17] For the latter two categories, the DMM also would have access to entering and clearing firm information for each order and, as applicable, the badge number of the floor broker representing the order.

[18] *See* NYSE Rule 13 and NYSE MKT Rule 13—Equities, defining non-displayed order types.

[19] The Exchanges previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchanges stopped making such information available to DMMs in January 2011. *See* NYSE and NYSE Amex Information Memo 11–03 (Jan. 19, 2011).

[20] The rule provisions proposed to be deleted are NYSE Rule 104(a)(6) and NYSE MKT Rule 104(a)(b)—Equities. For the text to be deleted, *see, e.g.,* Form 19b–4, SR–NYSE–2013–21, at 73 (Apr. 9, 2013), *http://www.nyse.com/nysenotices/nyse/rule-filings/pdf;jsessionid=3D35E4095153B77CA82FA0BB9EBE1BC2?file-_no=SR-NYSE-2013-21&seqnum=1.*

[21] The Exchanges are also proposing conforming amendments to correct cross-references to the former rules.

order information described above.[22] The proposed rules would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided ''in response to an inquiry from a member conducting a market probe in the normal course of business,'' as currently provided in the Exchanges' rules. Under the Proposals, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and Floor brokers would only be able to access such information through a direct manual interaction with a DMM at the post.

III. Initial Comment Letters and Responses

Following publication of the Proposals in the **Federal Register**, the Commission received two comment letters.[23] The first commenter offered several arguments in support of the Proposals. First, the commenter stated that, by permitting DMMs to use both pre- and post-trade information that is already present on the Exchanges' systems, the Proposals promote the legitimate Floor function of matching buyers and sellers,[24] which could promote just and equitable principles of trade and would be in the public interest.[25] According to this commenter, the Proposals would enable market participants to trade larger blocks of stock with minimal market impact and could improve execution quality, especially for large buy-side institutions such as mutual funds that trade on behalf of retail investors.[26] The commenter also stated that the Proposals contained sufficient safeguards to protect investors.[27] Specifically, the commenter stated that institutional investors monitor execution quality very closely and that, if the Proposals were to hurt execution quality on the Exchanges, market participants would migrate to other exchanges.[28] The commenter also stated that the Proposals do not permit unfair discrimination, as any market participant that wanted to avail itself of the sharing of order information on the Floor of the exchanges could route its orders to a Floor broker.[29]

The second commenter expressed qualified support for the proposal.[30] Citing its research, this commenter stated that communicating partially disaggregated order information from DMMs to Floor brokers would have a positive effect on price discovery, as it would assist DMMs and Floor brokers in finding the counterparties for certain trades.[31] In this way, the commenter believed, the Proposals could incentivize transactions and contribute to greater liquidity in the market.[32] However, the commenter also noted the importance of maintaining controls on the dissemination of such information, as the dissemination of excessive information may be detrimental to the investor that originated the order.[33] In that regard, the commenter noted that NYSE maintains a system of formal rules and sanctions, in addition to the informal discipline that exists on the Floor, to safeguard the disclosure of order information.[34] In contrast, however, the commenter noted that such controls did not exist outside the Floor.[35] Therefore, the commenter stated, disaggregated order information should not be made available to market participants outside the floor of the NYSE, as there would ''be no means to control the use that this information is put to.'' [36]

IV. Institution of Proceedings to Determine Whether to Approve or Disapprove the Proposals

On July 26, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the Proposals, raising concerns with respect to the Proposals.[37] Specifically, the Commission's Order Instituting Proceedings expressed concern that the Proposals would permit disaggregated order information to be made available to off-Floor market participants (*i.e.,* Floor broker customers) and stated that:

> The Exchanges * * * do not address why the dangers that would arise if disaggregated information were made available generally to off-floor market participants are not present when this same information is made available to off-floor market participants that are Floor broker customers. Nor have the Exchanges described any mechanism by which they would be able to assure that disaggregated information is not misused by Floor broker customers. Accordingly, the Commission is concerned that the Exchanges have not demonstrated why this aspect of the Proposals is designed to protect investors and [the] public interest, and is not designed to permit unfair discrimination, or impose an unnecessary or inappropriate burden on competition.[38]

After the institution of proceedings, the Commission received an additional comment letter from one of the commenters [39] and two responses from the Exchanges.[40] The commenter stated its unqualified support for the Proposals. The commenter noted that a Floor broker provides a substantial measure of control over the use that brokers and off-Floor members make of the information. The commenter also noted that direct electronic dissemination of disaggregated order information, which is not proposed by the Exchanges, would reach numerous off-Floor participants instantaneously and systemically, while manual dissemination of disaggregated order information, as proposed by the Exchanges, would be slower and would reach a selected number of off-Floor participants. The commenter stated its belief that the sharing of disaggregated order information by DMMs with Floor brokers would be superior to systematic electronic dissemination because it would be more targeted, more limited in reach, and less timely.

In Response Letter I, the Exchanges stated that dissemination of disaggregated order information under the Proposal would be practically useless to market participants employing high-speed, automated trading strategies because the proposed manner of dissemination is manual and occurs one stock at a time. The Exchanges stated their belief that the Proposals are designed to benefit only market participants looking to source large amounts of liquidity, not traders employing predatory trading strategies, because the dissemination of information is manual and thus slower than electronic dissemination. The Exchanges further stated their belief that competition among market venues would ensure that the disclosure of disaggregated order information would not be abused, as market participants concerned about possible misuse of such information could designate their orders as hidden from DMMs and Floor brokers or could route their orders to other venues.

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[22] Because DMMs on the trading floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[23] *See supra* note 5.

[24] *See* Angel Letter, *supra* note 5.

[25] *See id.* at 7–8.

[26] *Id.* at 2.

[27] *Id.* at 7.

[28] *Id.* at 5.

[29] *Id.* at 6–7.

[30] *See* LSE Letter I, *supra* note 5.

[31] *Id.* at 2–3.

[32] *Id.* at 1–2.

[33] *Id.* at 2.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] Securities Exchange Act Release No. 70047, *supra* note 7.

[38] *Id.* at 11–12, 78 FR at 46664.

[39] *See* LSE Letter II, *supra* note 8.

[40] *See* the Response Letters, *supra* note 9.

In Response Letter II, the Exchanges supplemented their initial response and more directly addressed the specific concerns raised by the Commission in the Order Instituting Proceedings. As to articulating a legitimate rationale for making disaggregated order information available to Floor broker customers, the Exchanges stated:

> [M]aking the disaggregated order information available to Floor brokers' customers would expand the possible points of contact with member organizations representing block trading interest since the customers may have networks of relationships that differ from and may extend beyond those of Floor brokers, thereby increasing opportunities for order interaction and reduced transaction costs for the investing public.[41]

As to the potential for misuse of disaggregated order information that is shared off the Floor, the Exchanges represented that they would address this concern in three ways. First, each Exchange would issue a Member Education Bulletin to its Floor brokers that would (1) underscore that the purpose of sharing disaggregated order information is to increase the potential points of contact for those seeking to source block trading interest and to increase the opportunities for interaction of larger orders and (2) stress the existing requirement that Floor brokers who share ''market look'' information with a customer have a reasonable belief that the customer is receiving the information in consideration of a transaction or potential transaction. Second, the Exchanges represent that they have engaged in extensive discussions with FINRA regarding the Proposals and the use of cross-market surveillance to detect the misuse of disaggregated order information by off-Floor market participants. Finally, each Exchange would issue an Information Memo to its member organizations providing notice of the proposed rule changes and what they mean for orders that are entered on the Exchange, and each Exchange would develop and provide notice of a complaint mechanism to report any potential misuse of disaggregated order information provided to a Floor broker customer.

V. Discussion and Findings

The Commission has carefully reviewed the Proposals, the comment letters, and the Response Letters, and finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, Section 6(b)(5) of the Act[42] requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, Section 6(b)(8) of the Act[43] requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

The Proposals would allow a DMM at his or her post to have access to: (1) Aggregated buying and selling interest; (2) disaggregated information about the price and size of any individual order or e-Quote and the entering and clearing firm for such orders; and (3) post-trade information. The Proposals would further allow a DMM to disclose disaggregated order information to Floor brokers in response to an inquiry in the normal course of business,[44] and a Floor broker in receipt of such information would be able to transmit that information to his or her customer for the purpose of facilitating order interaction. If a market participant has elected not to display an order to a DMM, however, the DMM would not have access to information about that order.

As noted above, in its Order Instituting Proceedings to determine whether to approve or disapprove the Proposals, the Commission expressed concerns with the dissemination of disaggregated order information off the trading Floor. In Response Letter II, the Exchange made representations in response to these concerns. The Exchanges set forth their rationale for permitting such information sharing, arguing that the customers of Floor brokers may have networks of relationships that would increase interaction among large orders and decrease transaction costs. The Exchanges also made representations concerning the potential misuse of disaggregated order information that has been shared off the Floor. The Exchanges represented (1) that they would stress to Floor brokers that, in order to share disaggregated order information with customers, Floor brokers must have a reasonable belief that the customer is receiving the information in furtherance of a transaction or a potential transaction; (2) that trading will be monitored for evidence of front-running and that surveillance could potentially identify the misuse of disaggregated order information by off-Floor market participants,[45] and (3) that the Exchanges will educate their member organizations about the operation of the Proposals, the ability of member organizations to submit orders that would not be visible to DMMs or Floor brokers, and the existence of a complaint mechanism, to be established by the Exchanges, through which member organizations could report suspect misuse of order information.

The Commission believes that, on balance, the Exchanges have articulated in Response Letter II colorable arguments in response to the concerns expressed by the Commission in the Order Instituting Proceedings. The Commission believes that the Exchanges have met their burden to demonstrate that the Proposals are adequately designed to protect investors and the public interest and that the Proposals are not designed to permit unfair discrimination or to impose an unnecessary or inappropriate burden on competition.

VI. Conclusion

For the foregoing reasons, the Commission finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act[46] and Section 6(b)(8) of the Act.[47]

It is therefore ordered, pursuant the Section 19(b)(2) of the Act, that the Proposals (SR–NYSE–2013–21 and SR–NYSEMKT–2013–25), are hereby approved.

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[41] *See* Response Letter II, *supra,* note 9.

[42] 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(8).

[44] A DMM would also be permitted to provide order information to visitors to the trading Floor for the purpose of demonstrating methods of trading.

[45] The Exchanges represented in Response Letter II that a Floor broker's wireless device and Exchange-provided portable phones would generate a record of outgoing messages and calls and that this information would be made available for investigations of suspected misuse of order information.

[46] 15 U.S.C. 78f(b)(5).

[47] 15 U.S.C. 78f(b)(8).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–31130 Filed 12–27–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71173; File No. SR–NASDAQ–2013–156]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Options Execution Algorithm With Priority Overlays

December 23, 2013.

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 December 16, 2013, 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, II, and III 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 proposes to amend Chapter VI, Section 10, of the Rules of the NASDAQ Options Market (''NOM''). Specifically, NASDAQ proposes to add an additional execution algorithm and priority overlays to govern the priority of orders, as explained more fully below.

The text of the proposed rule change is below; proposed new language is in italics.

* * * * *

Chapter VI Trading Systems

* * * * *

Sec. 10 Book Processing

System orders shall be executed through the Nasdaq Book Process set forth below:

(1) Execution Algorithm—*The Exchange will determine to apply, for each option, one of the following execution algorithms described in paragraphs (A) or (B). The Exchange will issue an Options Alert specifying which execution algorithm will govern which options any time it is modified.*

(A) Price/Time—The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, *if there are two or more quotes or orders at the best price,* trading interest will be executed in time priority.

(B) Size Pro-Rata—The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded down to the nearest whole number. If there are residual contracts remaining after rounding, such contracts will be distributed one contract at a time to the remaining Participants in time priority.

(C) Priority Overlays Applicable to Size Pro-Rata Execution Algorithm: The Exchange will apply the following designated Participant priority overlays, which are always in effect when the Size Pro-Rata execution algorithm is in effect.

(i) Public Customer Priority: the highest bid and lowest offer shall have priority except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. For purposes of this Rule, a Public Customer order does not include a Professional Order.

(ii) Market Maker Priority: After all Public Customer orders have been fully executed, Options Market Makers shall have priority over all other Participant orders at the same price. If there are two or more Options Market Maker quotes and orders for the same options series at the same price, those shall be executed based on the Size Pro-Rata execution algorithm. If there are contracts remaining after all Market Maker interest has been fully executed, such contracts shall be executed based on the Size Pro-Rata execution algorithm.

(2)–(7) No change.

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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

NOM operates as an all-electronic system (''System'' or ''Trading System'') with no physical trading floor and provides for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders. NOM now seeks to introduce a different priority rule in certain options in order to create additional incentives for firms to provide liquidity on NOM.

Currently, Chapter VI, Section 10, Book Processing, provides that the System will have a single execution algorithm based on price/time priority. The System and rules provide for the ranking, display, and execution of all orders in price/time priority without regard to the status of the entity entering an order. For each order, among equally-priced or better-priced trading interest, the System currently executes against available contra-side displayed contract amounts in full, in price/time priority.

At this time, the Exchange proposes to amend Chapter VI, Section 10, to provide for a Size Pro-Rata execution algorithm. In order to make clear that only one of the two execution algorithms is applicable to a particular option, NASDAQ proposes to add introductory language to Section 10(1) to state that the Exchange will determine to apply, for each option, one of the execution algorithms described in subparagraphs (A)[3] or (B). The

[48] *See* 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] NASDAQ is also proposing to amend subparagraph (A) to provide that, respecting the price/time execution algorithm, within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority. This is intended to be clearer and match the new language in subparagraph (B).