Holders in good standing would be permitted to nominate additional eligible candidates if a written petition of at least 10 percent of ETP Holders in good standing were submitted to the Equities Nominating Committee within two weeks after the Announcement Date. Each petition candidate would be required to include a completed questionnaire used to gather information concerning director candidates, and the Equities Nominating Committee would determine whether the petition candidate is eligible to serve on the Equities Board or NYSE Arca Board (including whether such person was free of a statutory disqualification under Section 3(a)(39) of the Act), and such determination would be final and conclusive. According to the Exchange, the proposed rule change would amend this process to align it with the NYSE and NYSE MKT processes and proposed NYSE Arca Rule 3.2(b)(2)(C) for the same reasons stated above with respect to proposed NYSE Arca Rule 3.2.[16]

Contested Nominations

Currently, in the event that there is a contested nomination, the Equities Nominating Committee submits such contested nomination to the ETP Holders, which may select two nominees for the contested seat on the Equities Board and one nominee for the contested seat on the NYSE Arca Board. The Exchange proposes to simplify this text to align it with the proposed changes to NYSE Arca Rule 3.2(b)(2)(C)(iii).[17]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,[19] which, among other things, requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer. The Commission also notes that the proposed rule changes are substantially similarly to the nominating and fair representation policies and procedures of NYSE and NYSE MKT. Furthermore, the proposed rule changes would not amend the fair representation requirements as set forth in Sections 3.02 of both the NYSE Arca Bylaws and the Equities Bylaws.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [20] that the proposed rule changes (SR–NYSEArca–2012–67), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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written petition of at least 10 percent of ETP Holders in good standing is submitted to the Equities Nominating Committee within 45 days preceding the expiration of the current term, such person is also nominated by the Equities Nominating Committee.

[16] *See* Notice, *supra* note 4 at 38703.

[17] Current NYSE Arca Equities Rule 3.2(b)(2)(C)(ii) does not describe the voting process. The proposed rule changes would amend the rule to explicitly provide that ETP Holders would be afforded no less than 20 calendar days to submit their votes on a confidential basis. The Exchange also proposes certain technical and conforming changes.

[18] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(3).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67639; File No. SR–NASDAQ–2012–071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Amend Rule 4758(a)(1)(A) To Reflect a Change in NASDAQ's Routing Functionality

August 10, 2012.

I. Introduction

On June 14, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' 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 Rule 4758(a)(1)(A) to reflect a change in NASDAQ's routing functionality. The proposed rule change was published for comment in the **Federal Register** on June 29, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description

NASDAQ has proposed to amend Rule 4758(a)(1)(A) to reflect a change in NASDAQ's order routing functionality, which will allow routable orders [4] to simultaneously execute against NASDAQ available shares and route to other markets for execution of the remainder of the order. Currently, when a routable order is entered into the NASDAQ system, the NASDAQ book is first checked for available shares. If such an order is not filled or filled only partially, then the order is routed to away markets with the best bid or best offer pursuant to NASDAQ's System routing table.[5]

NASDAQ stated that it has observed that upon partial execution of a routable order at NASDAQ market participants often react to the order by cancelling their orders on other markets and entering new orders at inferior prices. This occurs because the current process directs the order to NASDAQ before attempting to access available liquidity at other markets and thereby allows market participants to react to the execution (an effect known as ''market impact'' or ''information leakage''). As a consequence, the available shares at the away market are no longer available, resulting in a lower likelihood of successfully accessing liquidity on away markets (*i.e.,* the ''fill rate'') and an increased likelihood of ultimately receiving an execution at an inferior price. As such, NASDAQ has proposed to address this by changing how the routing process will operate.

NASDAQ has proposed to execute routable orders against the NASDAQ book for available shares and to simultaneously route any remaining shares to additional markets. Specifically, under the proposed change a routable order would attempt to execute against the available shares at

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67246 (June 25, 2012), 77 FR 38875 (''Notice'').

[4] For purposes of this filing, a ''routable order'' is an order entered into the NASDAQ System, which is not of an Order Type precluded from routing to other markets.

[5] The ''System routing table'' is the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Rule 4758(a)(1)(A).

NASDAQ and, to the extent the order would not be filled by such available shares, NASDAQ would simultaneously route the remainder of the order to other venues, according to NASDAQ's System routing table, in a manner consistent with Regulation NMS (*i.e.,* satisfying all displayed protected quotes). In the event that the amount of shares on other markets is insufficient to completely fill the order, or the order fails to completely execute, NASDAQ would then post the remaining shares on the NASDAQ book or cancel the remaining shares per the routed order's instructions. NASDAQ believes that this simultaneous execution against NASDAQ available shares and routing to other venues' shares will avoid the deleterious effect of market impact discussed above and result in overall faster and better executions of its members' routable orders.

NASDAQ noted, in its proposal, that it is not changing the execution and routing sequence of all routable orders. The TFTY, SAVE, SOLV, and CART orders are designed to execute serially as part of their strategies, which is generally to reduce the blended fees associated with transacting on multiple markets. As such, simultaneous routing of such orders would not result in a better execution in terms of the goals of these routable order types.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 proposed rule change meets these requirements in that it promotes efficiency in the market, and should, as represented by NASDAQ, increase the likelihood that a routable order will receive faster and better executions. As a result, the proposed rule change could improve NASDAQ's ability to effectively process routable orders. For these reasons, the Commission believes that the proposed change is consistent with Section 6(b)(5) of the Act.[8]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASDAQ–2012–071) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67635; File No. SR–NYSEMKT–2012–34]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the NYSE Amex Options Fee Schedule Regarding a Rebate for Order Flow Providers, an Increase in the Service Fee Applicable to Market Makers, and a Fee for Market Maker Executions of SPY Options

August 9, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 31, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to proposes to [sic] amend the NYSE Amex Options Fee Schedule to (i) Establish a rebate for Order Flow Providers (''OFPs'')[4] based on the average daily volume (''ADV'') of Customer[5] Electronic Complex Orders[6] executed by an OFP on the Exchange; (ii) increase the service fee applicable to NYSE Amex Options Market Makers[7] that have reached the monthly Market Maker fee cap, from $0.05 per contract to $0.10 per contract for executions of Electronic Complex Orders; and (iii) establish a fee of $0.10 per contract for NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) Establish a rebate for OFPs based on the ADV of Customer Electronic Complex Orders executed by an OFP on the Exchange; (ii) increase the service fee applicable to NYSE Amex Options Market Makers that have reached the monthly Market Maker fee cap, from $0.05 per contract to $0.10 per contract for executions of Electronic Complex Orders; and (iii) establish a fee of $0.10 per contract for NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. The Exchange proposes to implement these changes on August 1, 2012.

The Exchange proposes to establish a rebate for OFPs based on the ADV of Customer Electronic Complex Orders

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An OFP is any ATP Holder that submits, as agent, orders to the Exchange. *See* Rule 900.2NY(57).

[5] The term ''Customer'' means an individual or organization that is not a broker-dealer. *See* Rule 900.2NY(18).

[6] *See* Rule 980NY.

[7] References herein to Market Makers include Specialists and e-Specialists. *See* Rule 900.2NY(76). *See also* Rule 927.4NY.