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 under Section 19(b)(2)(B)[8] of the Act to determine whether the proposed rule change 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–NYSEMKT–2017–19 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–NYSEMKT–2017–19. 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–NYSEMKT–2017–19, and should be submitted on or before May 8, 2017.

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

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07639 Filed 4–14–17; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(2)(B).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80432; File No. SR–ISE–2017–03]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Amend Various Rules in Connection With a System Migration to Nasdaq INET Technology

April 11, 2017.

I. Introduction

On February 8, 2017, the International Securities Exchange, LLC (now known as Nasdaq ISE, LLC (''ISE'' or ''Exchange'')) [1] filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend various Exchange rules in connection with a system migration to Nasdaq, Inc. (''Nasdaq'') supported technology. The proposed rule change was published for comment in the **Federal Register** on February 27, 2017.[4] On March 30, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, 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 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. As noted above, the Commission received no comment letters regarding the proposed rule change.

The Exchange proposes to amend various Exchange rules to reflect the ISE system migration to a Nasdaq INET technology.[8] In connection this system migration, as discussed below, the Exchange intends to adopt certain trading functionality currently utilized on Nasdaq Exchanges.[9]

[1] ISE was renamed Nasdaq ISE, LLC in a rule change that became operative on April 3, 2017. *See* Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017) (SR–ISE–2017–25).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 80075 (February 21, 2017), 82 FR 11975 (''Notice'').

[5] In Amendment No. 1, the Exchange clarified the proposed handling of complex orders during Limit Up-Limit Down states, proposed that All-Or-None Orders may only be entered with a time-in-force designation of Immediate-Or-Cancel, proposed to memorialize the handling of Cancel and Replace Orders, and removed a proposed rule change regarding delaying the implementation of Directed Orders. The Exchange also clarified the reason Price Level Protection would be applied to complex orders and made other clarifying changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. The amendment is available at: *https://www.sec.gov/comments/sr-ise-2017-03/ise201703-1677882-149321.pdf.*

[6] In approving this proposed rule change, 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] INET is utilized across Nasdaq's markets, including The NASDAQ Options Market LLC (''NOM''), NASDAQ PHLX LLC (''Phlx''), and NASDAQ BX, Inc. (collectively, the ''Nasdaq Exchanges''). *See* Notice, *supra* note 4, at 11975. The Commission also recently approved Nasdaq GEMX, LLC's (formerly ISE Gemini, LLC) migration to INET. *See* Securities Exchange Act Release Nos. 80011 (February 10, 2017), 82 FR 10927 (February 16, 2017) (SR–ISEGemini–2016–17); 80014 (February 10, 2017), 82 FR 10952 (February 16, 2017) (SR–ISEGemini–2016–18).

[9] *See* Notice, *supra* note 4, at 11975. The Exchange anticipates that it will begin implementation of the proposed rule changes in the second quarter of 2017. *See* Notice, *supra* note 4, at 11975. According to the Exchange, the system migration will be on a symbol by symbol basis. The Exchange will issue an alert to members in the form of an Options Trader Alert to provide notification of the symbols that will migrate and the relevant dates. *See id.* Further, the Commission has approved a separately filed companion proposed rule change to amend the Exchange's opening process in connection with the system migration to INET technology. *See* Securities Exchange Act

Continued

A. Trading Halts

1. Cancellation of Quotes

The Exchange proposes to amend ISE Rule 702 (Trading Halts) to conform the treatment of orders and quotes on the Exchange to Phlx Rule 1047(f). Specifically, the Exchange proposes to amend Rule 702(a)(2) by providing that during a halt the Exchange will maintain existing orders on the book but not existing quotes. Pursuant to the revision, during the halt, the Exchange will accept orders and quotes and, for such orders and quotes, process cancels and modifications. Currently, the Exchange maintains existing orders *and* quotes during a trading halt. With respect to cancels and modifications during a trading halt, the Exchange represents that the current process on ISE will not change under the proposed rule change.[10]

The Exchange represents that its proposal to maintain existing orders on the book but not existing quotes during a halt would provide market participants with clarity as to the manner in which interests will be handled by the System.[11] The Exchange believes that, during a trading halt, the market may move and create risk to market participants with respect to resting interests.[12]

The Commission believes that that cancelling existing quotes during a trading halt would provide market participants the opportunity to update potentially stale quotes. Further, the Commission notes that the Exchange will process cancels and modifications to orders as well as quotes received during a halt. Finally, the Commission further notes that the proposed treatment of quotes during a halt is consistent with existing Phlx rule.[13]

2. Limit Up-Limit Down

The Exchange proposes to replace existing ISE Rule 703A (Trading During Limit Up-Limit Down States in Underlying Securities) with proposed ISE Rule 702(d).[14] Specifically, proposed ISE Rule 702(d) will provide that during a Limit State and Straddle State in the underlying NMS stock[15] the Exchange will not open an affected option.[16] However, provided the Exchange has opened an affected option for trading, the Exchange will: (i) Reject Market Orders[17] (including complex Market Orders) and notify members of the reason for such rejection;[18] (ii) cancel complex orders that are Market Orders residing in the System, if the complex Market Order becomes marketable while the affected underlying is in a Limit or Straddle State;[19] (iii) continue to process Market Orders exposed at the NBBO pursuant to Supplementary Material. 02 to ISE Rule 1901 and complex Market Orders exposed for price improvement pursuant to ISE Rule 722(b)(3)(iii), pending in the System, and cancel such Market Order or complex Market Order if at the end of the exposure period the affected underlying is in a Limit or Straddle State;[20] and (iv) elect Stop Orders if the condition is met, and, because such orders become Market Orders, cancel them back and notify members of the reason for such rejection.[21] Moreover, when the security underlying an option class is in a Limit State or Straddle State, the Exchange will suspend the maximum quotation spread requirements for market maker quotes in ISE Rule 803(b)(4) and the continuous quotation requirements in ISE Rule 804(e).[22] Additionally, the Exchange will not consider the time periods associated with Limit States and Straddle States when evaluating whether a market maker has complied with its continuous quotation requirements in ISE Rule 804(e).[23]

The Commission believes that the proposed Rule 702(d) would provide certainty to market participants regarding the manner in which Limit up-Limit Down states would impact the opening process as well as Market Orders (including complex Market Orders) and Stop Orders. The Commission believes that the rejection of Market Orders (including complex Market Orders and elected Stop Orders) is reasonably designed to potentially prevent executions of un-priced orders during times of significant volatility.[24] The Commission also notes that processing rather than cancelling existing Market Orders is reasonable because these Market Orders are only pending in the System if they are exposed at the NBBO pursuant to Supplementary Material .02 to ISE Rule 1901 or because they are complex Market Orders exposed for price improvement pursuant to ISE Rule 722(b)(3)(iii).[25] Further, the Exchange believes that electing Stop Orders that are pending in the System during a Limit or Straddle State, if conditions for such election are met, would provide market participants with the intended result.[26] Lastly, the Commission notes that proposed ISE Rule 702(d)(4) is substantively identical to existing ISE Rule 703A(c), which is being deleted.

3. Auction Handling During a Trading Halt

The Exchange proposes to amend certain rules to account for the impact of a trading halt on the Exchange's auction mechanisms. First, the Exchange proposes to amend ISE Rule 723 (Price Improvement Mechanism for Crossing Transactions) regarding the manner in which a trading halt will impact an order entered into the Price Improvement Mechanism (''PIM''). Today, if a trading halt is initiated after an order is entered into the PIM, the Exchange terminates such auction and eligible interest is executed.[27] The Exchange proposes to amend the current process by terminating the auction and not executing eligible interest when a

Release No. 80225 (March 13, 2017), 82 FR 14243 (March 17, 2017) (SR–ISE–2017–02).

[10] *See* Notice, *supra* note 4, at 11976.

[11] *See* Notice, *supra* note 4, at 11983.

[12] *See id.*

[13] *See* Phlx Rule 1047(f).

[14] The Exchange represents that proposed ISE Rule 702(d) is similar to Phlx Rule 1047(d). *See* Notice, *supra* note 4, at 11976.

[15] Proposed ISE Rule 702(d) states that capitalized terms used in Rule 702(d) will have the same meaning as provided for in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the ''LULD Plan'').

[16] *See* proposed ISE Rule 702(d)(1). The Exchange states that its rules do not currently address the opening rotation in the event that the underlying NMS stock is open but has entered into a Limit or Straddle State. *See* Notice, *supra* note 4, at 11976.

[17] For the definition of the term ''Market Orders'', *see* ISE Rule 715(a).

[18] *See* proposed ISE Rule 702(d)(2).

[19] *See id. See also* Amendment No. 1, *supra* note 5.

[20] *See* proposed ISE Rule 702(d)(2). If the affected underlying is no longer in a Limit or Straddle State after the exposure period, the Market Order will be processed with normal handling. *See id.* The Exchange currently cancels Market Orders pending in the System upon initiation of a Limit or Straddle State. *See* Notice, *supra* note 4, at 11976.

[21] *See* proposed ISE Rule 702(d)(3). ISE currently does not elect Stop Orders that are pending in the System during a Limit or Straddle State. Under the proposal, the Exchange will elect Stop Orders that are pending in the System during a Limit or Straddle State, if conditions for such election are met; however, because such orders become Market Orders, they will be cancelled back to the member with a reason for such rejection. *See* Notice, *supra* note 4, at 11977.

[22] *See* proposed ISE Rule 702(d)(4).

[23] *See id.* Proposed ISE Rule 703(d)(4) is substantively identical to ISE Rule 703A(c). *See* Notice, *supra* note 4, at 11976.

[24] *See* Notice, *supra* note 4, at 11982.

[25] *See* Notice, *supra* note 4, at 11982.

[26] *See* Notice, *supra* note 4, at 11982.

[27] *See* Notice, *supra* note 4, at 11977. In the case of a complex order entered into the PIM, if a trading halt is initiated, the auction would be terminated and eligible interest cancelled without execution. *See id.* The Exchange is not amending this behavior. *See id.*

trading halt occurs.[28] Similarly, the Exchange also proposes to amend to ISE Rule 716 (Block Trades) to state that, if a trading halt is initiated after an order is entered into the Block Order Mechanism, Facilitation Mechanism, or Solicited Order Mechanism, the Exchange will automatically terminate such auction without execution.[29]

The Exchange believes that its proposal to terminate the PIM auction, Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism and not execute eligible interest when a trading halt occurs will provide certainty to participants regarding how their interest will be handled.[30] The Exchange believes that during a trading halt, the market may move and create risk to market participants with respect to resting interest.[31] The Commission believes that the proposed rule provides transparency and clarity regarding the handling of these orders during a trading halt.

B. Market Order Spread Protection

The Exchange proposes to amend ISE Rule 711 (Acceptance of Quotes and Orders) by adopting a new mandatory risk protection entitled Market Order Spread Protection which will apply to Market Orders.[32] Pursuant to proposed ISE Rule 711(c), if the NBBO is wider than a preset threshold at the time a Market Order is received by the Exchange, the Exchange will reject the order. The Exchange will notify members of the threshold with a notice, and, thereafter, will notify members of any subsequent changes to the threshold.[33] The Exchange represents that the Market Order Spread Protection will be the same for all options traded on the Exchange and is applicable to all members that submit Market Orders.[34]

The Exchange believes, and the Commission concurs, that the proposed Market Order Spread Protection would help mitigate risks associated with trading errors and help reduce the number of executions at dislocated prices.[35] The Commission also notes that the protection is similar to a mandatory feature currently offered on NOM.[36]

C. Acceptable Trade Range

Today, ISE offers a Price Level Protection that places a limit on the number of price levels at which an incoming order or quote to sell (buy) would be executed automatically when there are no bids (offers) from other exchanges at any price for the options series.[37] The Exchange proposes to replace the current Price Level Protection with Phlx's Acceptable Trade Range for orders that are not complex orders.[38] The Exchange states that the proposed Acceptable Trade Range is a mechanism designed to prevent the System from experiencing dramatic price swings by preventing the market from moving beyond set thresholds.[39] The System will calculate an Acceptable Trade Range to limit the range of prices at which an order or quote will be allowed to execute.[40] Upon receipt of a new order or quote, the Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange, where the reference price is the National Best Bid (''NBB'') for sell orders/quotes and the National Best Offer (''NBO'') for buy orders/quotes. Accordingly, the Acceptable Trade Range is: The reference price − (x) for sell orders/quotes; and the reference price + (x) for buy orders.[41] If an order or quote reaches the outer limit of the Acceptable Trade Range (the ''Threshold Price'') without being fully executed, then any unexecuted balance will be cancelled.[42] The Acceptable Trade Range will not be available for All-or-None Orders.[43]

The Exchange represents that it will set the Acceptable Trade Range at levels to ensure that it is triggered infrequently.[44] While the Acceptable Trade Range settings will be tied to the option premium, other factors will be considered when determining the exact settings.[45] For example, the Exchange states that acceptable ranges may change if market-wide volatility is high or if overall market liquidity is low based on historical trends.[46] To ensure a well-functioning market, the Exchange believes that different market conditions may require adjustments to the threshold amounts from time to time.[47] Further, while the Acceptable Trade Range settings will generally be the same across all options traded on the Exchange, ISE proposes to set them separately based on characteristics of the underlying security.[48] For example, the Exchange has generally observed that options subject to the Penny Pilot program quote with tighter spreads than options not subject to the Penny Pilot. Accordingly, the Exchange will set Acceptable Trade Ranges for three categories of options: (1) Penny Pilot Options trading in one cent increments for options trading at less than $3.00 and increments of five cents for options trading at $3.00 or more; (2) Penny Pilot Options trading in one-cent increments for all prices; and (3) Non-Penny Pilot Options.[49]

The Exchange represents that the Acceptable Trade Range should prevent the System from experiencing dramatic price swings by preventing the market from moving beyond set thresholds.[50] The Commission believes that the Acceptable Trade Range is reasonably designed to prevent executions of orders and quotes at prices that are significantly worse than the NBBO at time of an order's submission and may

[28] *See* proposed ISE Rule 723(d)(5). The Exchange is not amending the behavior of the PIM with respect to complex orders. *See* Amendment No. 1, *supra* note 5.

[29] *See* proposed subsections (c)(3), (d)(3)(iv), and (e)(2)(iv) of ISE Rule 716. The Exchange represents that this proposed amendment represents the current process on ISE and is generally consistent with Phlx Rule 1047(c). *See* Notice, *supra* note 4, at 11977.

[30] *See* Notice, *supra* note 4, at 11983.

[31] *See id.*

[32] The Exchange states that this mandatory feature is currently offered on NOM to protect Market Orders from being executed in very wide markets. *See* Notice, *supra* note 4, at 11977. *See also* NOM Rules at Chapter VI, Section 6(c).

[33] *See* Notice, *supra* note 4, at 11977. The Exchange proposes to initially set the threshold to $5, similar to the threshold set on NOM. *See id.* The Exchange states that NOM set the differential at $5 to match the maximum bid/ask differential permitted for quotes on that exchange. *See id.* ISE also uses a similar $5 differential. *See id.*

[34] *See* Notice, *supra* note 4, at 11978.

[35] *See* Notice, *supra* note 4, at 11983.

[36] *See* NOM Rules at Chapter VI, Section 6(c).

[37] *See* Notice, *supra* note 4, at 11980; ISE Rule 714(b)(1).

[38] *See* Phlx Rule 1080(p). Unlike Phlx, ISE does not offer a general continuous re-pricing mechanism. *See id.* Accordingly, the Exchange states that the proposed Acceptable Trade Range will not include the posting period functionality available today on Phlx. *See* Notice, *supra* note 4, at 11978, n.16. The Exchange will not post interest that exceeds the outer limit of the Acceptable Trade Range; rather the interest will be cancelled. *See* Notice, *supra* note 4, at 11978. Orders that do not exceed the outer limit of the Acceptable Trade Range will post to the order book and will reside on the order book at such price until they are either executed in full or cancelled by the member. *See* Notice, *supra* note 4, at 11979.

[39] *See* Notice, *supra* note 4, at 11983.

[40] *See* proposed ISE Rule 714(b)(1)(i).

[41] The Exchange states that the Acceptable Trade Range settings are tied to the option premium. *See* Notice, *supra* note 4, at 11979, n.17. A table consisting of several steps based on the premium of an option will be displayed on the *NASDAQTrader.com* Web site and used to determine how far the market for a given option will be allowed to move. *See* Notice, *supra* note 4, at 11979. Updates to the table would be announced via an Exchange alert, generally the prior day. *See id.*

[42] *See* proposed ISE Rule 714(b)(1)(ii).

[43] *See* proposed ISE Rule 714(b)(1)(ii). Today, ISE's Price Level Protection rule is also not available for All-or-None Orders. *See* Notice, *supra* note 4, at 11978, n.18.

[44] *See* Notice, *supra* note 4, at 11978.

[45] *See id.*

[46] *See id.*

[47] *See id.*

[48] *See* Notice, *supra* note 4, at *id.*

[49] *See* proposed ISE Rule 714(b)(1)(iii).

[50] *See* Notice, *supra* note 4, at 11983.

reduce the potential negative impacts of unanticipated volatility in individual options.

For complex orders, the Exchange proposes to continue to apply the existing Price Level Protection rule and relocate the rule from current ISE Rule 714(b)(1) to proposed ISE Rule 714(b)(4).[51] The Exchange represents that the existing Price Level Protection Rule is a better protection for complex orders than the proposed Acceptable Trade Range protection because, unlike single leg orders, complex orders are not subject to trade-through protections and the Acceptable Trade Range protection utilizes the NBBO.[52] The Commission also notes that the functionality of Price Level Protection will remain the same with respect to complex orders. Further, the Commission notes that the proposed Acceptable Trade Range is similar to an existing mechanism on Phlx.[53]

D. PMM Order Handling and Opening Obligations

The Exchange proposes to eliminate the Primary Market Maker (''PMM'') order handling and opening obligations in ISE Rule 803(c).[54] As described above, with the migration of ISE to the Nasdaq INET architecture, the Exchange is adopting the Acceptable Trade Range and opening rotation functionality currently offered on NOM and Phlx, which do not contain similar requirements for the PMMs as in ISE Rule 803(c).

The Exchange represents that PMMs' current obligations are no longer necessary due to the introduction of the Acceptable Trade Range and proposed changes to the Exchange's opening process.[55] The Exchange states that its proposal to conform the Exchange's opening process to Phlx Rule 1017 will result in an opening initiated by the receipt of an appropriate number of valid width quotes by the PMM or Competitive Market Maker, instead of an opening process initiated by a PMM.[56] Similarly, the Exchange believes the proposed Acceptable Trade Range functionality will continue to provide order protection to members without imposing any PMM obligations.[57] The Exchange further represents that NOM and Phlx do not impose similar PMM order handling and opening obligations.[58] Accordingly, the Commission believes that these changes are consistent with the Act.

E. Back-Up PMM

The Exchange proposes to amend Supplementary Material .03 to ISE Rule 803 to eliminate Back-Up PMMs. Today, any ISE member that is approved to act in the capacity of a PMM or an ''Alternative Primary Market Maker'' may voluntarily act as a Back-Up PMM in an options series in which it is quoting as a Competitive Market Maker (''CMM'').[59] With the technology migration, the Exchange believes that a Back-Up PMM is no longer necessary because under INET the Exchange will not utilize the order handling obligations present on the Exchange today.[60] The Exchange further represents that the proposed new opening process obviates the importance of such a role because it would no longer rely on a market maker to initiate the opening process.[61] Accordingly, the Commission believes that these changes are consistent with the Act.

F. Market Maker Speed Bump

The Exchange proposes to amend ISE Rule 804 (Market Maker Quotations) to establish default parameters for certain risk functionality. The Exchange currently offers a risk protection mechanism for market maker quotes that removes a member's quotes in an options class if a specified number of curtailment events occur during a set time period (''Market Maker Speed Bump'').[62] In addition, the Exchange offers a market-wide risk protection that removes a market maker's quotes across all classes if a number of curtailment events occur (''Market-Wide Speed Bump'').[63] ISE Rule 804(g) currently requires that market makers set curtailment parameters for both the Market Maker Speed Bump and the Market-Wide Speed Bump. Today, if a market maker does not set these parameters, for each Market Maker Speed Bump and the Market-Wide Speed Bump, the System rejects their quotes.[64] With the technology migration, the Exchange proposes to provide default curtailment parameters, which will be determined by the Exchange and announced to members.[65] The Commission believes that this change is consistent with the Act and notes that, although the Exchange will establish default curtailment settings, market makers will have discretion to set different curtailment settings appropriate for their trading and risk tolerance.

G. Anti-Internalization

The Exchange proposes to amend the Supplementary Material at .03 to ISE Rule 804 (Market Maker Quotations) to adopt an anti-internalization rule. Today, ISE's functionality prevents Immediate-or-Cancel (''IOC'') orders entered by a market maker from trading with the market maker's own quote.[66] The Exchange proposes to replace this self-trade protection with anti-internalization functionality currently offered on Phlx.[67] The Exchange proposes to provide that quotes and orders entered by market makers using the same member identifier will not be executed against quotes and orders entered on the opposite side of the market by the same market maker using the same member identifier. In such a case, the System will cancel the resting quote or order back to the entering party prior to execution. The proposed anti-internalization functionality will not apply in any auction or with respect to complex order transactions. The Exchange states that this proposed functionality does not modify the duty

[51] *See* proposed ISE Rule 714(b)(4). To adapt the rule so that it only applies to complex orders, the Exchange proposes to amend the Price Level Protection rule to: (i) Remove references that specifically relate to single leg order functionality; (ii) remove references to PMM handling that does not apply to complex orders; and (iii) add references to component legs to make clear that the rule applies to the component legs of complex orders. *See* Notice, *supra* note 4, at 11980. The Exchange represents that the number of price levels at which an incoming order or quote could execute when there are no corresponding bids or offers from other exchanges at any price is currently set to five per leg. *See* Amendment No. 1, *supra* note 5.

[52] *See* Notice, *supra* note 4, at *id.*

[53] *See* Notice, *supra* note 4, at 11983; Phlx Rule 1080(p).

[54] ISE Rule 803(c) provides that, in addition to the obligations contained in Rule 803 for market makers generally, for options classes to which a market maker is the appointed PMM, PMM shall have the responsibility to: (1) As soon as practical, address Priority Customer Orders that are not automatically executed pursuant to Rule 714(b)(1) in a manner consistent with its obligations under Rule 803(b) by either (i) executing all or a portion of the order at a price that at least matches the NBBO and that improves upon the Exchange's best bid (in the case of a sell order) or the Exchange's best offer (in the case of a buy order); or (ii) releasing all or a portion of the order for execution against bids and offers on the Exchange; and (2) initiate trading in each series pursuant to Rule 701 (Trading Rotations).

[55] *See* Notice, *supra* note 4, at 11983. *See also supra* note 9.

[56] *See* Notice, *supra* note 4, at 11983. *See also supra* note 9.

[57] *See* Notice, *supra* note 4, at 11980. The Exchange states that Phlx does not currently have similar roles for a Specialist on its market. *See id.*

[58] *See* Notice, *supra* note 4, at 11980.

[59] *See* ISE Rule 803, Supplementary Material .03.

[60] *See* Notice, *supra* note 4, at 11983.

[61] *See* Notice, *supra* note 4, at 11983. *See also supra* note 9.

[62] *See* ISE Rule 804(g)(1) and Supplementary Material .04 to ISE Rule 722.

[63] *See* ISE Rule 804(g)(2). Market makers may request the Exchange to set the market wide parameter to apply to just ISE or across ISE and ISE Gemini. *See id.*

[64] *See* Notice, *supra* note 4, at 11980–81.

[65] *See* Notice, *supra* note 4, at 11981.

[66] *See id.*

[67] *See* Phlx Rule 1080(p)(2).

of best execution owed to public customer orders.[68]

The Exchange represents that the proposal is designed to assist market makers in reducing trading costs from unwanted executions potentially resulting from the interaction of executable interest from the same firm performing the same market making function.[69] The Commission believes that the proposed rule is reasonably designed to prevent the unwanted execution of quotes and orders entered by market makers using the same member identifier.

H. Minimum Execution Quantity Orders

The Exchange proposes to amend ISE Rule 715 (Types of Orders) to remove minimum quantity orders in subpart (q).[70] The Exchange states that the utilization of minimum quantity orders by its members has been very limited, and therefore proposes to remove this order type.[71] Furthermore, the Exchange proposes to remove two references to minimum quantity orders in Supplementary Material .02 to ISE Rule 713 and in Supplementary Material .04 to ISE Rule 717.

The Exchange states that the removing the minimum quantity order type would simplify functionality available on the Exchange and reduce the complexity of its order types.[72] The Exchange further represents that the utilization of minimum quantity orders by its members has been very limited and is currently being utilized to transact less than 1% of the Exchange's volume.[73] Accordingly, the Commission believes it is appropriate for the Exchange to remove references to the minimum quantity order type.

I. Cancel and Replace Orders

The Exchange proposes to amend Supplementary Material .02 to ISE Rule 715 (Types of Orders) to memorialize how the Exchange System will handle cancel and replace orders in connection with the Exchange's technology migration to INET.[74] Currently, Exchange members can send a Cancel and Replace Order in one message, which allows the replacement order to retain the time priority of the cancelled order, subject to certain exceptions.[75] However, currently the Exchange does not apply price or other reasonability checks to the replacement order for all Cancel and Replace Orders.[76] For example, the Exchange notes that currently, a Cancel and Replace Order which reduced the size of an original order from 600 to 300 contracts would not be subject to price or other reasonability checks.[77]

The Exchange now proposes to define the Cancel and Replace Order to ensure that price and other reasonability checks are applied to Cancel and Replace Orders.[78] The Exchange proposes to define a Cancel and Replace Order as a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order. If the previously placed order is already partially filled or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. Additionally, the replacement order will retain the priority of the cancelled order, if the order posts to the order book, provided the price is not amended, size is not increased, or in the case of Reserve Orders, size is not changed. However, if the replacement portion of a Cancel and Replace Order does not satisfy the System's price or other reasonability checks the existing order will be cancelled and not replaced.[79]

The Exchange represents that conducting price or other reasonability checks for all Cancel and Replace Orders will validate orders against current market conditions prior to proceeding with the request to modify the order.[80] The Exchange further believes that memorializing Cancel and Replace Order handling will add transparency to the Exchange's rules and reduce the potential for investor confusion.[81]

The Commission notes that other exchanges with a similar order type permit an order to retain priority if only the size of the order is decremented.[82] Accordingly, the Commission believes it is appropriate for the Exchange to define Cancel and Replace Order in the manner proposed.

J. All-Or-None Orders

The Exchange proposes to amend ISE Rule 715(c) to provide that All-Or-None Orders[83] may only be entered into the Exchange's System with a time-in-force designation of Immediate-Or-Cancel.[84] Currently, the Exchange allows users to submit All-Or-None Orders with any time-in-force designation. As proposed, an All-Or-None Order would be required to be submitted as an Immediate-Or-Cancel Order and thus will either execute in its entirety or be cancelled. Because All-Or-None Orders will either be executed or cancelled, the Exchange also proposes to remove language stating that All-Or-None Orders can be maintained in the System in Supplementary Material .02 to ISE Rule 713 and to delete Supplementary Material .04 to Rule 717, which concerns the exposure of non-marketable All-Or-None Orders.[85]

The Exchange states that this change would remove uncertainty with respect to the manner in which All-Or-None Orders would be handled in the order book, because the All-Or-None Order would be canceled if it cannot be immediately executed in its entirety.[86] Accordingly, the Commission believes it is appropriate for the Exchange to require that All-Or-None Orders be entered with a time-in-force designation of Immediate-Or-Cancel.

For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

[68] *See* Notice, *supra* note 4, at 11981.

[69] *See* Notice, *supra* note 4, at 11981, n.34.

[70] A Minimum Quantity Order is an order type that is available for partial execution only for a specified number of contracts or greater. A member may specify whether any subsequent executions of the order must also be for the specified number of contracts or greater, or if the balance may be executed as a regular order. If all executions are to be for a specified number of contracts or greater and the balance of the order after one or more partial execution(s) is less than the minimum, such balance is treated as all-or-none. *See* ISE Rule 715(q).

[71] *See* Notice, *supra* note 4, at 11981.

[72] *See* Notice, *supra* note 4, at 11984.

[73] *See* Notice, *supra* note 4, at 11981, n.35.

[74] *See* Amendment No. 1, *supra* note 5.

[75] *See id.* The Exchange notes that, instead of sending a Cancel and Replace Order, a Member can separately send a cancellation message and a new order, for which the Exchange would apply price or other reasonability checks, but the new order would not retain the priority of the original order. *See id.* This behavior will not change. *See id.*

[76] *See* Amendment No. 1, *supra* note 5.

[77] *See id.*

[78] *See* proposed ISE Rule 715, Supplementary Material .02.

[79] Price and reasonability checks that would be applied include ISE Rule 710 (Minimum Trading Increments), ISE Rule 711(c) (proposed Market Order Spread Protection), ISE Rule 714(b)(2) (Limit Order Price Protection), and ISE Rule 722(b)(1) (Minimum Increments for Complex Orders), and Supplementary Material .07 (b), (c) and (d) to Rule 722 (Price Limits for Complex Orders and Quotes). *See* Amendment No. 1, *supra* note 5, n.39. The Exchange also notes that, as for other orders, the Exchange may cancel an order because it does not satisfy a format or other requirement specified in the Exchange's rules and specifications. *See id.*

[80] *See id.*

[81] *See id.*

[82] *See id; see* Phlx Rule 1080(b)(i)(A).

[83] An All-Or-None Order is a limit or market order that is to be executed in its entirety or not at all. *See* ISE Rule 715(c).

[84] An Immediate-Or-Cancel Order is a limit order that is to be executed in whole or in part upon receipt, and any portion not so executed is to be treated as cancelled. *See* ISE Rule 715(b)(3).

[85] *See* Amendment No. 1, *supra* note 5.

[86] *See id.*

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[87] that the proposed rule change (SR–ISE–2017–03), 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.[88]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07638 Filed 4–14–17; 8:45 am]

BILLING CODE 8011–01–P

[87] 15 U.S.C. 78s(b)(2).

[88] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80425; File No. SR–NASDAQ–2017–031]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4703 (Order Attributes), Rule 4752 (Opening Process), Rule 4753 (Nasdaq Halt Cross) and Rule 4754 (Nasdaq Closing Cross)

April 11, 2017.

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 March 31, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4752 (Opening Process), Rule 4753 (Nasdaq Halt Cross) and Rule 4754 (Nasdaq Closing Cross) to specify the execution priority of an Order that has been locked or crossed at its non-displayed price by a Post-Only Order and re-priced for purposes of the Opening, Closing and Halt Cross. Nasdaq is also proposing to amend Rule 4703 (Order Attributes) and Rule 4753 (Halt Cross) to clarify the effect of the re-pricing of an Order that has been locked or crossed at its non-displayed price by a Post-Only Order for purposes of the Opening, Closing and Halt Cross.

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 this proposal is to amend Rule 4752 (Opening Process), Rule 4753 (Nasdaq Halt Cross) and Rule 4754 (Nasdaq Closing Cross) to specify the execution priority of an Order that has been locked or crossed at its non-displayed price by a Post-Only Order and re-priced for purposes of the Opening, Closing and Halt Cross.

Rule 4752, 4753 and 4754 set forth the operation of the Opening Cross, the Halt Cross, and the Closing Cross, respectively. Each Rule specifies the manner in which orders will be executed if less than all available interest is executed as part of the Cross. Specifically, Rule 4752 states that, if the Nasdaq Opening Cross price is selected and fewer than all shares of Market On Open (''MOO''), Limit On Open (''LOO''), Opening Imbalance Only Order (''OIO'') and Early Market Hours Orders that are available in the Nasdaq Market Center would be executed, all Quotes and Orders shall be executed at the Nasdaq Opening Cross price in the following priority: (A) MOO and Early Market Hours market peg orders, with time as the secondary priority; (B) LOO orders, Early Market Hours limit orders, OIO orders, SDAY limit orders, SGTC limit orders, GTMC limit orders, SHEX limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price based on limit price with time as the secondary priority; (C) LOO orders, OIO Orders, Early Market Hours and displayed interest of quotes, SDAY limit orders, SGTC limit orders, GTMC limit orders, and SHEX limit orders at the Nasdaq Opening Cross price with time as the secondary priority; and (D) reserve interest of quotes, SDAY limit orders, SGTC limit orders, and GTMC limit orders and SHEX limit orders at the Nasdaq Opening Cross price with time as the secondary priority.

Rule 4753 states that, if the Nasdaq Halt Cross price is selected and fewer than all shares of Eligible Interest that are available in the Nasdaq Market Center would be executed, all Eligible Interest shall be executed at the Nasdaq Halt Cross price in price/time priority.

Rule 4754 states that, if the Nasdaq Closing Cross price is selected and fewer than all Market On Close (''MOC''), Limit On Close (''LOC''), Imbalance Only (''IO'') and Close Eligible Interest would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority: (A) MOC orders, with time as the secondary priority; (B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price based on price with time as the secondary priority; (C) LOC orders, IO Orders displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority; (D) reserve interest at the Nasdaq Closing Cross price with time as the secondary priority; and (E) unexecuted MOC, LOC, and IO orders will be canceled.

Nasdaq now proposes to amend the provisions of Rules 4752, 4753 and 4754 to specifically describe the execution priority an Order that was entered on the Nasdaq Book and has been locked or crossed at its non-displayed price by a Post-Only Order and re-priced for purposes of the Opening, Closing or Halt Cross.

In November 2016, the Commission approved changes to the functionality of Post-Only Orders.[3] As a result of this

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–NASDAQ–2016–111).

Under the new Post-Only functionality, the behavior of Post-Only orders would be altered when the adjusted price of such orders lock or cross a non-displayed price on the Exchange's Book. Specifically, if the adjusted price of the Post-Only Order would lock or cross a non-displayed price on the Exchange's Book, the Post-Only order would be posted in the same manner as a Price to Comply Order. However, the Post-Only Order would execute if (i) it is priced below $1.00 and the value of price improvement associated with executing against an Order on the Nasdaq Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Nasdaq Book and subsequently provided liquidity, or (ii) it is