against the PIP Order and the allocation that follows after the conclusion of the PIP. The Exchange believes that the proposed change promotes competition, as it is designed to allow the Exchange to continue compete for order flow and offer greater opportunities for price improvement. As mentioned above, liquidity fees and credits do not necessarily result in additional revenue to the Exchange, but will simply allow BOX to continue to provide the credit incentives to Participants to attract additional order flow to the PIP. In order to continue to offer these incentives for price improvement the Exchange needs to ensure that its liquidity fees and credits remain revenue neutral by charging orders that are executing in the same way the same fee.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [15] and Rule 19b–4(f)(2) thereunder,[16] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2013–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number SR–BOX–2013–19. 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–BOX–2013–19 and should be submitted on or before May 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08650 Filed 4–11–13; 8:45 am]

BILLING CODE 8011–01–P

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

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69341; File No. SR–NASDAQ–2013–048]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Chapter V, Section 3 Subparagraph (d)(iv) Regarding Obvious Error or Catastrophic Error Review

April 8, 2013.

I. Introduction

On March 14, 2013, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''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 provide for how the Exchange proposes to treat obvious and catastrophic options errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan''). The proposed rule change was published for comment in the **Federal Register** on March 20, 2013.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[5] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.[6]

In connection with the implementation of the Plan, the

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69142 (March 15, 2013), 78 FR 17251 (''Notice'').

[4] *See* Letter to Heather Seidel, Associate Director, Division of Trading and Markets, Commission, from Thomas A. Wittman, Senior Vice President, The NASDAQ Stock Market LLC, dated April 5, 2013 (''Nasdaq Letter'').

[5] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

[6] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

Exchange proposes to adopt new Chapter V, Section 3(d)(iv) to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Chapter V, Sections 6(b) or 6(f), for a one year pilot basis from the date of adoption of the proposed rule change.[7] The Exchange proposes to retain the ability to review trades that occur during a Limit State or Straddle State by Exchange motion pursuant to Chapter V, Section 6(d)(i).

Under Sections 6(b)(i) and (f)(i), obvious and catastrophic errors are calculated by determining a theoretical price and applying such price to ascertain whether the trade should be nullified or adjusted. Obvious and catastrophic errors are determined by comparing the theoretical price of the option, calculated by one of the methods in Section 6(c), to an adjustment table in Section 6(b)(i) for obvious errors or Section 6(f)(i) for catastrophic errors. Generally, the theoretical price of an option is the National Best Bid and Offer (''NBBO'') of the option. In certain circumstances, Exchange officials have the discretion to determine the theoretical price.[8]

The Exchange believes that neither of these methods is appropriate during a Limit State or Straddle State. Under Section 6(c)(i), the theoretical price is determined with respect to the NBBO for an option series just prior to the trade. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Section 6(c)(i) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State. Additionally, because the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan, the Exchange believes potential trade reviews of executions that occurred at the participant's limit price and also in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

With respect to Section 6(c)(ii), affording discretion to Exchange staff to determine the theoretical price and thereby, ultimately, whether a trade is busted or adjusted and to what price, the Exchange notes that it would be difficult to exercise such discretion in periods of extraordinary market volatility and, in particular, when the price of the underlying security is unreliable. The Exchange again notes that the theoretical price in this context would be subjective. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

Additionally, the Exchange proposes to provide that trades would not be subject to review under Section 6(b)(ii) during a Limit or Straddle State. Under Section 6(b)(ii), a trade may be nullified or adjusted where an execution occurred in a series quoted no bid. The Exchange believes that these situations are not appropriate for an error review because they are more likely to result in a windfall to one party at the expense of another in a Limit State or Straddle State, because the criteria for meeting the no-bid provision are more likely to be met in a Limit State or Straddle State, and unlike normal circumstances, may not be a true reflection of the value of the series being quoted.

In response to these concerns, the Exchange proposes to adopt Section 3(d)(iv) to provide that trades are not subject to an obvious error or catastrophic error review pursuant to Section 6(b) and 6(f) during a Limit State or Straddle State. In addition, proposed Section 3(d)(iv) also will include a qualification that nothing in proposed Section 3(d)(iv) will prevent electronic trades from being reviewed on Exchange motion pursuant to Section 6(d)(i). According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors.

III. Discussion

The Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that suspending certain aspects of Chapter V, Section 6 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in

[7] The Exchange stated that various members of the Exchange staff have spoken to a number of member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that a variety of viewpoints emerged, mostly focused on having many trades stand, on fairness and fair and orderly markets and on being able to re-address the details during the course of the pilot, if needed.

[8] Specifically, under Section 6(c), the theoretical price is determined in one of two ways: (i) If the series is traded on at least one other options exchange, the last National Best Bid price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction, just prior to the transaction; or (ii) as determined by MarketWatch as defined in Chapter I, if there are no quotes for comparison purposes.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Section 6(b) or 6(f). The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[11] This will allow the Commission, the Exchange, and other interested parties

[11] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Section 3(d)(iv), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* Nasdaq Letter, *supra* note 4.

to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

Finally, the Commission notes that the Plan, to which these rules relate, will be implemented on April 8, 2013. Accordingly, for the reasons stated above, and in consideration of the April 8, 2013 implementation date of the Plan, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[12] for approving the Exchange's proposal prior to the 30th day after the publication of the notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASDAQ–2013–048), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08605 Filed 4–11–13; 8:45 am]

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[12] 15 U.S.C. 78s(b)(2). The Commission noticed substantially similar rules proposed by NYSE MKT LLC and NYSE Arca, Inc. with a full 21 day comment period. *See* Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013) and Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69337; File No. SR–ISE–2013–29]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

April 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''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 ISE proposes to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 proposed rule change is to amend the manner in which the fees for Crossing Orders[3] and the Fee for Responses to Crossing Orders[4] is [sic] applied for regular and complex orders traded on the Exchange. The fee for Crossing Orders and the fee for Responses to Crossing Orders discussed below apply to both standard options and Mini options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees and rebates applicable to standard options and Mini Options. The Exchange notes that while the discussion below notes the fees and rebates for standard options, the fees and rebates for Mini Options, which are not discussed below, are 1/10th of the fees and rebates for standard options.[5]

First, the Exchange currently charges a fee of $0.20 per contract to Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders (except for Priority Customer, this fee is currently $0.00 per contract) for regular Crossing Orders in the Select Symbols.

The Exchange also currently charges a fee of $0.20 per contract (for largest leg only) to Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders (except for Priority Customer, this fee is currently $0.00 per contract) for complex Crossing Orders in all symbols.

As an incentive to attract crossing orders for execution in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate. This rebate is provided to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism. This rebate currently applies to regular and complex orders in the Select Symbols. For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price Improvement Mechanism, the rebate is currently $0.25 per contract. The Exchange does not currently charge an execution fee for contracts that receive the rebate.

The Exchange now proposes to apply the existing crossing order fees for the full size of a crossing order, regardless if a portion of the order also receives a rebate. For example, assume a member enters a facilitation order for 1000 contracts; a market maker responds and trades 200 contracts; and the remaining 800 contracts are traded by the member that entered the order. Currently, the member that entered the order is charged a crossing fee for the 800 contracts it executed and receives a rebate for the 200 contracts that were executed by the market maker. Under this proposed rule change, the member that entered the order will be charged an

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

[2] 17 CFR 240.19b–4.

[3] A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the Schedule of Fees, orders executed in the Block Order Mechanism are also considered Crossing Orders. *See* Preface, ISE Schedule of Fees.

[4] ''Responses to Crossing Order'' (other than Regular Orders in Non-Select Symbols) is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. ''Responses to Crossing Order'' (for Regular Orders in Non-Select Symbols) is any response message entered with respect to a specific auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. *See* Preface, ISE Schedule of Fees.

[5] *See* SR–ISE–2013–28 (not yet published).