investors and the public interest. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal may assist investors by allowing participants the benefits of attributable orders. Additionally, the Exchange provided the Commission with written notice of its intent to file the proposal, along with a brief description and text of the proposal, prior to the date of the filing of the proposal.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 of the Act.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–85 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2008–85. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–CBOE–2008–85 and should be submitted on or before September 16, 2008.

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

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19785 Filed 8–25–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58386; File No. SR–NASDAQ–2007–067]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 To Establish an Imbalance Cross

August 19, 2008.

I. Introduction

On July 18, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') 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 establish the ''Imbalance Cross'' on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on April 8, 2008.[3] No comments were received on the proposed rule change. On August 13, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change to make certain technical, non-substantive modifications to the original rule filing. This order approves the proposed rule change as amended.

II. Description of the Proposal

Nasdaq proposes to implement for a one-year pilot the Imbalance Cross, a system enhancement which will automatically suspend trading in Nasdaq-listed securities that are the subject of abrupt and significant intra-day price movements. The Imbalance Cross will be fully automated, be based on objective, quantitative criteria, and be triggered automatically when the execution price of a Nasdaq-listed security moves more than a fixed amount away from a pre-established ''triggering price'' for that security. The Triggering Price for each security will be the price of any execution by the System in that security within the previous 30 seconds. For each Nasdaq security, the System will continually compare the price of each execution against the prices of all executions in that security over the 30 seconds.

As the System compares current executions against executions occurring in the previous 30 seconds, it will determine whether the current execution price is outside of a ''threshold range'' for that security. The Threshold Range for each security will be based upon the current execution price for that security and will vary by price. Specifically, for per-share execution prices of $1.75 or less, the Threshold Range will be 15 percent; for execution prices over $1.75 and up to $25, the Threshold Range will be 10 percent; for execution prices over $25 and up to $50, the Threshold Range will be five percent; and for execution prices over $50, the Threshold Range will be three percent.

If the execution price of a trade in a Nasdaq security exceeds the Threshold Range from the Triggering Price, the System will automatically trigger the Imbalance Cross.[4] When that occurs, the System will cease executing trades in that security for a 60-second ''Display Only Period.'' During that 60-second Display Only Period, the System will maintain all current quotes and orders and continue to accept new quotes and orders in that Security. The System will disseminate an Order Imbalance Indicator every 5 seconds.

Unlike a trading halt pursuant to Nasdaq Rule 4120, the Imbalance Cross will not be considered a regulatory halt and, therefore, it will not trigger a marketwide trading halt under Section X of the Nasdaq UTP Plan. As a result, other markets will be permitted to continue trading a Nasdaq stock that is undergoing a Market Re-Opening on Nasdaq. During the Imbalance Cross, Nasdaq's quotations will be marked ''non-firm,'' signaling to other markets that quotes and orders routed to Nasdaq

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57595 (April 1, 2008), 73 FR 19118 (''Original Filing'').

[4] For example, for a security trading at $50.00, if a trade occurs at $42.50 or below or 57.50 or above it will trigger the Imbalance Cross.

will not be executed during this re-opening process.

At the conclusion of the 60-second Display Only Period, the System will automatically re-open the market by executing the Nasdaq Halt Cross as set forth in Rule 4753(b)(2)–(4) as it does today for securities subject to a trading halt pursuant to Rule 4120. Unlike securities subject to a trading halt under Nasdaq Rule 4120, securities subject to an Imbalance Cross will automatically re-open at the end of the 60-second Display Only Period; the 60-second period will not be subject to further extensions.

The Imbalance Cross price will result in a single price opening; the price will be set by the Nasdaq Halt Cross. The Nasdaq Halt Cross will operate in the same manner as the Halt Cross operates when trading resumes following a trading halt initiated pursuant to Nasdaq Rule 4120 with one exception. Quotes and orders residing on the Nasdaq book during the Imbalance Cross will be subject to the same priorities and same execution algorithm that applies during the standard Halt Cross. However, unlike the standard Halt Cross, Nasdaq proposes to ''bound'' the Imbalance Cross price as it does the Nasdaq Closing Cross.[5] As already exists for the Nasdaq Closing Cross, Nasdaq will establish a benchmark price and a threshold range beyond which the Imbalance Cross price cannot move.

III. Discussion and Commission Findings

After careful consideration, 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] and, in particular, the requirements of Section 6 of the Act.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to create the Imbalance Cross, which would systematically suspend trading in Nasdaq-listed securities that are the subject of abrupt and significant intra-day price movements, will promote fair and orderly markets and the protection of investors.

The proposed Imbalance Cross would complement existing Nasdaq rules that are designed to protect the integrity of the market. Specifically, Nasdaq Rule 4120[9] authorizes Nasdaq Regulation to halt trading in a security based upon news or an emergency in the market. In addition, Nasdaq Regulation also has the ability under Nasdaq Rule 11890 to break trades if the trades meet the definition of clearly erroneous transactions.[10] The Commission notes that the Imbalance Cross shares characteristics with trading halts initiated pursuant to Nasdaq Rule 4120 as well as with the evaluation of potential clearly erroneous trades pursuant to Nasdaq Rule 11890. The Threshold Ranges for the Imbalance Cross generally correspond to the thresholds established for clearly erroneous trades under Nasdaq IM–11890–4 with the exception of executions priced under $1.75 which will be subject to a straightforward 15 percent threshold. The Display Only Period is similar to the Display Only Period provided before the opening of a security subject to a trading halt initiated pursuant to Rule 4120. In addition, the dissemination of an Order Imbalance Indicator every 5 seconds is similar to the manner of reopening of securities that are the subject of a trading halt.

The Commission believes that, as presently constituted and under current market conditions, Nasdaq's Imbalance Cross trade qualifies for the single-priced reopening exception under Rule 611(b)(3) of Reg. NMS.[11] Nasdaq's Imbalance Cross will operate pursuant to written rules and procedures. When an Imbalance Cross is triggered in accordance with such rules, Nasdaq will call a formal trading halt during which time Nasdaq systems will be prohibited from executing orders. Members, however, may continue to enter quotes and orders, which will be queued during the 60-second Display Only Period. At the conclusion of the Display Only Period, the queued orders will be executed at a single price, pursuant to the rules governing the Imbalance Cross. Given the transparent and formalized process, the opportunity offered to all members to participate in the Imbalance Cross, and the infrequency with which Nasdaq anticipates the Imbalance Cross would be triggered,[12] the Commission believes that the exception from the Order Protection Rule for single-priced reopenings applies with regard to the Imbalance Cross process.

The Commission approves the proposal to establish the Imbalance Cross as a one-year pilot for an initial 100 Nasdaq-listed securities. Nasdaq will file a proposed rule change if it decides to expand the pilot or implement the pilot on a permanent basis.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASDAQ–2007–067), 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.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–19783 Filed 8–25–08; 8:45 am]

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[5] *See* Nasdaq Rule 4754(b)(2)(E) (Nasdaq Closing Cross).

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

[7] 15 U.S.C. 78f.

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

[9] For a detailed description of the Nasdaq Halt Cross, *see* Securities Exchange Act Release No. 53488 (March 15, 2006), 71 FR 14272 (March 21, 2006) (notice of filing of SR–NASD–2006–015).

[10] For a detailed description of the adjudication of potential clearly erroneous trades, *see* Securities Exchange Act Release No. 54854 (December 1, 2006), 71 FR 71208 (December 8, 2006) (notice of SR–NASDAQ–2006–046).

[11] 17 CFR 242.611(b)(3).

[12] Nasdaq has provided the Commission data that indicates that the Imbalance Cross should be triggered in only 0.001% of executions and, on average, in less than one percent of the securities traded on any given day. Because of the expected infrequency of occurrence, the Commission believes that there would be little opportunity to abuse the Imbalance Cross functionality simply to avoid compliance with the Order Protection Rule.

[13] 17 CFR 200.30–3(a)(12).