

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-2008-83. 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-2008-83 and should be submitted on or before September 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-19706 Filed 8-25-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58394; File No. SR-CBOE-2008-85]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adopting a New Order Type

August 20, 2008.

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 August 19, 2008, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 substantially 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 modify Rule 6.53 (Certain Types of Orders Defined) to allow for the submission of attributable orders. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Office of the Secretary, CBOE 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 6.53 (Certain Types of Orders Defined) to allow for the submission of attributable orders.³ These orders allow users to voluntarily display their firm IDs on the orders. The NASDAQ Options Market, LLC ("NOM") currently allows its participants to submit attributable orders (See NOM Chapter VI, Section (1)(d)(1)). As proposed, the Exchange may limit the systems/processes for which attributable orders will be available. For example, the

attributable order-type may initially only be available in connection with certain Exchange auction processes like the Hybrid Agency Liaison system which "flashes" marketable orders for price improvement executions before those orders are routed to another market center pursuant to the Options Linkage Plan. This proposal is responsive to requests by Exchange users who believe that enhanced executions may be obtained if firm ID information is allowed on orders (on a voluntary basis).

2. Statutory Basis

Since this proposal allows for greater customization by providing users with an additional order type, the Exchange believes that the proposal is consistent with the Act⁴ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposal is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to promote just and equitable principles of trade and to remove impediments to and to perfect the mechanism for a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposal.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)⁷ of the Act and Rule 19b-4(f)(6)⁸ thereunder because it effects a change that (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Firm ID is a 1-4 character identification code (letters and/or numbers). Each CBOE member firm may establish its own unique Firm ID.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 200.30-3(a)(12).

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.

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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 \$7.50 or above it will trigger the Imbalance Cross.