

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55721; File No. SR-NASDAQ-2007-047)

May 7, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Opening and Closing Cross for Securities Listed on the NYSE, Amex, and Regional Exchanges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2007, 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, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> 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

Nasdaq proposes a rule change to provide an open and close that matches orders where possible and provides a useful, tradable, robust opening and closing price for all securities listed on the New York Stock Exchange (“NYSE”), the American Stock Exchange (“Amex”), and regional exchanges. The text of the proposed rule change is

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

available at the Exchange, the Commission’s Public Reference Room, and [www.nasdaq.com](http://www.nasdaq.com).

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq’s Opening and Closing Crosses are price discovery facilities that cross orders at a single price. Nasdaq proposes to extend the success of Nasdaq’s Opening and Closing Cross matching functionality, which has been widely accepted in the industry, for all of the securities listed on the NYSE, Amex, and regional exchanges (the “non-Nasdaq securities”) with adjustments, as necessary, to comply with National Market System Plans and SEC rules specific to those securities, such as SEC Rule 10a-1.<sup>5</sup> Other than the exception described above, the processing will be exactly the same for the non-Nasdaq

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<sup>5</sup> Nasdaq Rule 3350, which governs short sales in Nasdaq securities, uses the latest bid change to determine the validity of a short sale. SEC Rule 10a-1, which governs short sales in non-Nasdaq securities, uses the last sale change to determine the validity of a short sale. Nasdaq will ensure that the Opening and Closing Crosses for non-Nasdaq securities comply with SEC Rule 10a-1. This difference will not impact the way orders are entered, displayed, priced or executed within the crosses; it is entirely a change that is internal to Nasdaq.

securities as the current process for Nasdaq securities.<sup>6</sup>

The proposed rule changes would provide Nasdaq with an open and close that matches orders and provides a useful, tradable, robust opening and closing price. Additionally, the process used will add transparency to the open and close in the same orderly process that is used for securities listed on Nasdaq. The same order types currently offered in the opening and closing process will be applied to non-Nasdaq securities, including: “On Open,” “Opening Imbalance Only,” “On Close,” “Closing Imbalance Only,” and “Imbalance Only.” The methodology used to determine the Opening and Closing Cross prices for non-Nasdaq securities as well as the execution algorithm for determining order priority will be identical to those currently employed for Nasdaq securities. Continuous information regarding the imbalances and indicative prices will be disseminated prior to the Opening and Closing Crosses exactly as it is currently disseminated for Nasdaq securities.

Like the current Opening and Closing Crosses for Nasdaq-listed securities, the Crosses for non-Nasdaq securities will have built in parameters to protect investors against executions that are not in line with normal trading in a given security. For non-Nasdaq securities the benchmark will be adjusted as necessary to account for the fact that a large percentage of share volume is traded on other markets.

Nasdaq will launch the Opening and Closing Crosses for non-Nasdaq securities in a phased manner. Nasdaq’s current intention is to begin with less than ten securities and, after determining that it is prudent to proceed, select another larger group of less than one

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<sup>6</sup> Nasdaq Rule 4752 currently limits the Opening Cross to Nasdaq-listed securities. Nasdaq proposes to remove that restriction and leave the substance of the rule unchanged. Nasdaq Rule 4754, governing the Closing Cross, contains no parallel restriction, therefore no change to Rule 4754 is required.

hundred securities and, once again after determining that it is prudent to proceed, continue the roll-out in a prudent manner until the roll-out is complete. Using a phased-in approach should ensure a smooth and orderly transition from the current opening process to the Nasdaq Opening and Closing Crosses and should be completed within several weeks of its initiation.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed 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 proposed rule change is based on successful experience with the Opening and Closing Cross for Nasdaq listed securities and is consistent with these requirements in that the changes are designed to address market participant input.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> As required by Rule 19b-4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission. 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.

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:

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-047 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2007-047. 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. Copies of such filing will also 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-NASDAQ-2007-047 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).