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–Phlx–2011–32 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 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–32. 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–Phlx–2011–32, and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7814 Filed 4–1–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64143; File No. SR–NASDAQ–2011–037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify Chapter VI, Section 8 of the Exchange's Rules

March 29, 2011.

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 15, 2011, The NASDAQ Stock Market LLC ("NASDAQ"), 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 NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter VI, Section 8 of the Exchange's rules, dealing with the Nasdaq Opening Cross. Additionally, NASDAQ is proposing to establish a Halt Cross that is nearly identical to the modified Opening Cross on NOM. The Exchange proposes to implement these changes on or about May 31, 2011.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, 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, 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.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

Nasdaq proposes to modify Chapter VI, Section 8 of the rules governing NOM, and in particular governing the opening of trading at the start of the trading day and at the resumption of trading following a halt. Since NOM was launched on March 31, 2008 Nasdaq has monitored the operation of the market to identify instances where market efficiency can be enhanced.[3] NASDAQ believes that the opening of the market, while currently quite effective, can be further enhanced, and that a Halt Cross would create a more orderly opening following a trading halt.

First, NOM currently employs a series of tie-breakers that resolve instances where multiple prices satisfy the conditions for executing the cross. These tie-breakers govern the calculation of the Current Reference Price that is disseminated to market participants prior to the execution of a cross. The tie-breakers also govern the calculation of the actual cross price. The tiebreakers are criteria that operate in a hierarchy. If one and only one price satisfies the first criterion, the system has no need to move to the second. Conversely, if multiple prices satisfy the first criterion, the algorithm turns to the second criteria and if multiple prices satisfy the second criterion, the algorithm then turns to the third criterion.

NASDAQ is proposing to eliminate what currently serves as the second tie-breaker that NOM employs to establish the Current Reference Price as set forth in Chapter VI, Section 8(a)(2(A)(ii) [sic] and the Cross price as set forth in subsection (b)(2)(B) of that Rule. This tie-breaker resolves price disputes based on minimizing order imbalances. In other words, under the current system, when more than one price satisfies equally the first condition for the Opening Cross, the system will choose that price which minimizes the order imbalance remaining if the cross were to be executed.

NASDAQ has determined to eliminate this tie-breaker because it has not proven useful in augmenting price discovery prior to the cross or in

[3] *See* Securities Exchange Act Release No. 60905 (Oct. 30, 2009), 74 FR 57544 (Nov. 6, 2009)) (SR–NASDAQ–2009–033); Securities Exchange Act Release No. 57822 (May 15, 2008), 73 FR 29800 (May 22, 2008)) (SR–NASDAQ–2008–045); Securities Exchange Act Release No. 57977 (June 17, 2008), 73 FR 35429 (June 23, 2008) (SR–NASDAQ–2008–052).

operating an effective opening cross. NASDAQ initially adopted the imbalance-based tie-breaker based upon its successful use in the equities opening cross. The imbalance-based tie-breaker has not performed well in the options cross during NASDAQ's experience. First, imbalances occur less often in the options market. Additionally, in NASDAQ's experience, such imbalances that do exist generally are much smaller in size than in the equities market. As a result, the size of an imbalance in an options cross rarely provides a meaningful basis for distinguishing between multiple prices at which a cross could occur. NASDAQ believes that elimination of this tie breaker will not hinder price discovery and will allow NASDAQ to focus the cross on the most relevant criteria.

NASDAQ is also proposing to modify the "mid-point" tie-breaker for the price dissemination and cross calculation which are set forth in modified subsections 8(a)(2(A)(iii) [sic] and the Cross price as set forth in subsection (b)(2)(C). Rather than choosing the midpoint of the NBBO, as happens today, the exchange will choose a price that more accurately represents the supply and demand in the market at the time of reference price dissemination and/or auction execution. A minimum threshold price, based on the higher of the last crossed NOM offer or the NBB, will be chosen and a maximum threshold price, based on the lower of the last crossed NOM bid or the NBO. The midpoint (in $0.01 increments) of the minimum threshold price and maximum threshold price will be the price if this tiebreaker is reached.

NASDAQ poses the following illustrations, each based on the assumption that other markets are open and NASDAQ is not:

Example 1:
NBBO: $1.80 × $1.90
Pre Open NOM Book:

Buy contracts	Buy prices	Sell prices	Sell contracts
20	$2.00	$1.82 1.86	10 10

Opening Auction/Reference Price: $1.88—The midpoint of $1.86 and $1.90

—The last crossed NOM offer of $1.86 is used as the minimum price threshold because it is *higher* than the NBB of $1.80

—The NBO of $1.90 is used as the maximum price threshold because it is *lower* than the last crossed NOM bid of $2.00

Example 2:
NBBO: $1.80 × $1.90
Pre Open NOM Book:

Buy contracts	Buy prices	Sell prices	Sell contracts
10	$MKT	$MKT	10

Opening Auction Price: $1.85—The midpoint of $1.80 and $1.90

—For the purpose of this tie-breaker, a price of $MKT is essentially infinity for buy orders and zero for sell orders

—The NBB of $1.80 is used as the minimum price threshold because it is *higher* than the last crossed NOM offer at $MKT

—The NBO of $1.90 is used as the maximum price threshold because it is *lower* than the lass [sic] crossed NOM bid at $MKT

Example 3:
NBBO: $1.80 × $1.90
Pre Open NOM Book:

Buy contracts	Buy prices	Sell prices	Sell contracts
10	$1.84	$1.75	10

Opening Auction Price: $1.82—The midpoint of $1.80 and $1.84

—The NBB of $1.80 is used as the minimum price threshold because it is *higher* than the last crossed NOM offer of $1.75

—The last crossed NOM bid of $1.84 is used as the maximum threshold because it is *lower* than the NBB of $1.90

NASDAQ believes that this formulation will improve price discovery and execution quality.

Additionally, NASDAQ is proposing to modify subsection (a)(2)(E)(iii) which governs when an indicative message is disseminated with a price of "market." First, such message will be disseminated when there is trading interest with a market price that is not offset, not when there is marketable interest. Second, whether NOM disseminates an indicative price of "market" will not depend upon the available interest being priced lower or higher than the near or far clearing prices. NASDAQ believes that this formulation of "market" will reduce potential confusion about NASDAQ's dissemination practices.

NASDAQ is also proposing to modify subsection (b)(1) of Section 8 to provide increased calibration of the time at which imbalance and indicative price data will begin to be disseminated. Generally, NASDAQ has had positive experience and feedback in beginning indicative data dissemination at 9:25 a.m. EST. Occasionally, however, NASDAQ has received participant feedback that an options class or classes would benefit from a different dissemination period due to the trading characteristics of that option. Accordingly, NASDAQ is proposing to calibrate the start time for data dissemination between 9:20 a.m. and 9:28 a.m. The initial default time for dissemination to being will remain at 9:25. NASDAQ believes that this calibration could benefit investors and poses little risk. When NASDAQ does change the start time for data dissemination, which will be rare, the new time of imbalance dissemination commencement would be published in advance and with equal access on the NASDAQ Trader Web site.

Moreover, NASDAQ is proposing to modify subsection (b)(5) to clarify when an Order Imbalance Indicator will be disseminated just prior to the opening cross. Currently, any time an imbalance remains just prior to the opening cross, NASDAQ disseminates a final Order Imbalance Indicator. Under the proposed modified rule, NASDAQ will disseminate this final Order Imbalance Indicator only when the imbalance contains routable trading interest that is marketable against the NBBO. The exchange believes that non-routable interest is best served by being posted on the exchange after execution of the opening cross.[4] Once the cross is executed and the order is posted, that trading interest will be disseminated as part of the exchange best bid or offer via the consolidated data feed. This broad dissemination will better advertise the trading interest and thereby increase the likelihood of an execution. Additionally, the exchange proposes to clarify that after the opening cross is executed, all orders in the imbalance will be cancelled, routed, or posted in accordance with the entering party's instructions.

[4] NASDAQ states that the goal of NOM's open is to attract as much liquidity as possible to interact with any orders that are marketable at the time of the open. NASDAQ believes that the change to post non-routable orders (at the NBBO) rather than disseminating additional imbalance messages provides more advertisement for the order because it is broadcast over the consolidated quote feed rather than just NASDAQ's proprietary market data feeds. For routable orders NOM is continuing the current process of advertising the order(s) via an imbalance message on NASDAQ's proprietary market data feeds rather than opening immediately and routing the order away. By doing this, NASDAQ's goal is to get the order a price that is equal to or better than the away quoted price. *See* email from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., to Carl E. Tugberk, Special Counsel, Division of Trading and Markets, Commission, dated March 29, 2011.

Finally, NASDAQ is proposing to re-establish an Opening Cross to be executed upon the termination of a trading halt.[5] Having operated NOM for almost two years, NASDAQ has determined in its experience that an auction will provide a more orderly opening of the market after a halt. This is particularly true because NOM has attracted significantly higher levels of liquidity, an important ingredient for a successful cross. Accordingly, NASDAQ is proposing to modify Chapter V, Section 4 (Resumption of Trading After a Halt) and various subsections of Chapter VI, Section 8. The Opening Cross will operate in the same manner following a trading halt as it operates at the start of the trading day, including dissemination of the Order Imbalance Indicator, matching algorithm, and posing or routing of interest that remains unexecuted following execution of the opening cross. The Opening Cross for halted options will differ only in the time at which it occurs and the fact that that time is determined pursuant to Chapter V, Section 4.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, 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. Nasdaq believes that the proposal is consistent with this standard because the proposed rule change is designed to improve execution quality at the critical opening of the market both at the start of the trading day and following a trading halt.

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.

[5] When Nasdaq first proposed its options trading rules, it planned to resume trading by operating a "Halt Cross," which it originally described in Chapter VI, Section 8. Nasdaq later amended the proposed rules to remove the Halt Cross. *See* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approval order regarding NOM Rules including Chapters III and XIV).

[6] 15 U.S.C. 78f(b).

[7] 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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, as amended, 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–NASDAQ–2011–037 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 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–037. 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2011–037, and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7836 Filed 4–1–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64144; File No. SR–NYSEAmex-2011–18]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to the Formation of a Joint Venture Between the Exchange, Its Ultimate Parent NYSE Euronext, and Seven Other Entities To Operate an Electronic Trading Facility for Options Contracts

March 29, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 23, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I and II 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.

[8] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.