

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50391; File No. SR-NASD-2004-090)

September 15, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Nasdaq Closing Cross

On June 9, 2004, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“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 auxiliary procedures for administering the Nasdaq Closing Cross on certain significant trading days. On July 23, 2004, Nasdaq amended the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on August 2, 2004.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change would establish auxiliary procedures for administering the Nasdaq Closing Cross on days when significant trading volume is expected (“significant trading days”). There are three components of the Nasdaq Closing Cross: (1) the creation of Market On Close (“MOC”), Limit on Close (“LOC”) and Imbalance

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 22, 2004 (“Amendment No. 1”). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

⁴ See Securities Exchange Act Release No. 50087 (July 26, 2004), 69 FR 46195.

Only (“IO”) order types; (2) the dissemination of an order imbalance indicator; and (3) Closing Cross processing in the Nasdaq Market Center at 4:00:00 p.m. that executes the maximum number of shares at a single, representative price that is the Nasdaq Official Closing Price. On significant trading days, the proposed auxiliary procedures would permit Nasdaq: (i) to set earlier times for the end of the order entry periods for IO, MOC, and LOC orders set forth in NASD Rule 4709(a); (ii) to set an earlier time for the order modification and cancellation periods for IO, MOC, and LOC orders set forth in NASD Rule 4709(a); (iii) to set an earlier time for the dissemination times and frequencies for the order imbalance indicator set forth in NASD Rule 4709(b); and (iv) to adjust the threshold values set forth in NASD Rule 4709(c)(2)(D) to no greater than twenty percent.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,⁶ in general, and furthers the objectives of Section 15A(b)(6),⁷ in particular, in that it is 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

⁵ 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).

⁶ 15 U.S.C. 78o-3(b).

⁷ 15 U.S.C. 78o-3(b)(6).

national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed auxiliary procedures will allow Nasdaq greater flexibility in the administration of the Nasdaq Closing Cross and help Nasdaq maintain a fair and orderly market during the close on significant trading days.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and, in particular, Section 15A(b) of the Act.⁸

⁸ 15 U.S.C. 78q-3(b).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2003-090), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).