

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53488; File No. SR-NASD-2006-015)

March 15, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Establish the Nasdaq Halt Cross

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 January 31, 2006, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On February 16, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change. On March 6, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to improve the opening process for Nasdaq securities that are the subject of a trading halt initiated pursuant to NASD Rule 4120(a). The text of the proposed rule change is available on Nasdaq’s Web site, <http://www.nasdaq.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to establish an opening cross for the trading of Nasdaq-listed securities that have been the subject of a trading halt initiated pursuant to NASD Rule 4120(a)(1), (4), (5), (6), or (7) ("Halt Cross").³ The Halt Cross will integrate quotes and orders that are entered prior to the resumption of trading in a halted stock, create an unlocked inside bid and offer in the Nasdaq Market Center, and facilitate an orderly process for opening trading at the time specified by Nasdaq pursuant to NASD Rule 4120.

The Current Process

Currently, Nasdaq opens the trading of Nasdaq stocks that have been the subject of a trading halt using the process described in NASD Rule 4704(c), which also governs stocks that are not designated to participate in the Opening Cross. For halted securities, that process has three components: (1) the Halt Period; (2) the Quotation Only Period; and (3) Trade Resumption. During the Halt Period, the entry of quotations and orders into Nasdaq systems is prohibited. When Nasdaq MarketWatch determines pursuant to NASD Rule 4120 that trading

³ The Halt Cross will not be used to open the market following a trading halt initiated under NASD Rule 4120(a)(2) or (3), which apply only to securities governed by the Consolidated Quotation System national market system plan.

should resume, a message is sent to market participants establishing a 15-minute Quotation Only Period where quotes and orders can be entered into Nasdaq systems but no executions occur.

When the Quotation Only Period ends, another message is sent to market participants signaling the resumption of trading, and the opening process described in NASD Rule 4704(c) occurs.

The current process executes quotes and orders that would lock or cross the market in a fair and orderly manner and creates an unlocked and uncrossed bid and offer for the opening of trading.

Nasdaq has determined, however, that the process can be improved.

The New Process

Of the three components described above, only the Halt Period will remain as it is today. The Quotation Only Period will remain at 15 minutes for Initial Public Offerings (“IPOs”) but will be shortened from 15 minutes to 5 minutes for all other halts. The Quotation Only Period will also be modified to provide for: (1) the dissemination of the net Order Imbalance Indicator (“NOII”) containing the same data elements currently disseminated prior to the Opening and Closing Crosses; (2) an “Imbalance Detection Process;” and (3) an Imbalance Delay. Nasdaq will modify Trade Resumption to provide for a processing of the Halt Cross and for the addition of a delay of between zero and 15 seconds (randomly selected) to minimize potential gaming behavior by market participants during Trade Resumption. The new process will be codified in proposed NASD Rule 4703, and language in NASD Rule 4704(c) describing the current process will be removed. Each of these modifications will be described in more detail below.

The Net Order Imbalance Indicator. Nasdaq proposes to disseminate the NOII prior to the Halt Cross, just as it does prior to the Opening and Closing Crosses. The NOII for the Halt Cross will contain the same data elements, reflecting the current state of the market leading into the Cross: (1) the Inside Match Price, which is the price at which the maximum number of shares of eligible quotes and orders would be paired; (2) the number of shares represented by

eligible quotes and orders that are paired at the Inside Match Price; (3) the number of shares in any imbalance at the Inside Match Price; and (4) the buy/sell direction of that imbalance at the Inside Match Price.

In order to increase efficiency, Nasdaq will maintain the same programming format for the NOII distributed during the Halt Cross as distributed during the Opening and Closing Cross. To maintain that uniformity, Nasdaq will disseminate an indicative clearing price range at which the Halt Cross would occur if the Halt Cross were to occur at that time. The two indicative prices in that range and the inside match price will, however, each be identical values because, in the absence of order types unique to the IPO and Halt Cross, the inside match price and indicative price range will each be calculated based upon the same order set, resulting in the same price output. The NOII for the Halt Cross will be disseminated every five seconds throughout the Quotation Only Period.

The NOII disseminated prior to the Halt Cross will differ in several ways from those disseminated prior to the Opening and Closing Crosses. First, the Halt Cross NOII will be based on different order types. The NOII for the Opening and Closing Crosses includes information about On Open and On Close order types, in addition to quotations and regular and extended hours orders for each time in force (Total Day, Day, Good-till-Canceled, and Immediate or Cancel). The NOII for the Halt Cross will include quotations, regular hours orders, and extended hours orders but not On Open or On Close orders. This difference is necessary because Nasdaq has determined not to support On Open and On Close order types in the middle of the trading day when the Halt Cross will occur. In Nasdaq's view, On Open and On Close Orders are impractical for an IPO or other halt where quoting and trading can resume at variable times and, thereby, could increase the potential of confusion or gaming behavior.

Second, the NOII for the Halt Cross will disseminate the same value for the Inside Match Price, Near Indicative Clearing Price and Far Indicative Clearing Price. This is based, in part, on the fact that, unlike during the opening and closing, during a halt, there is no firm inside quotation and the inside can be locked or crossed. For both the open and close, the Nasdaq inside is subject to automatic execution which provides a reliable price upon which to base an inside match calculation. In addition, the Halt Cross does not include On Open and On Close orders. On Open and On Close orders are available to absorb liquidity during the Opening and Closing Crosses and do affect the Near and Far Indicative Clearing Price data elements prior to the Opening and Closing Crosses. Due to these differences, Nasdaq concluded that calculating the Near and Far Indicative Clearing Prices could create ambiguous data. Nasdaq proposes to disseminate the Near and Far Indicative Clearing Price fields with identical values to the inside match price in order to avoid requiring market participants to re-program their systems to accept a different NOII.

Third, the Inside Match Price (and thus the Near and Far Indicative Clearing Prices) will be calculated using the following algorithm. First, the system will determine the price(s) that maximizes the number of shares paired. If more than one such price exists, the system will select the price that minimizes the imbalance of shares unpaired, and does not leave unexecuted shares at a superior price. If more than one price satisfies both conditions, the next tie breaker will depend on whether the Halt Cross is for an IPO or another halt. For an IPO halt, if more than one such price satisfies the above conditions, the system will select the price that minimizes the distance from the Issuer's IPO price, which is found in the previous day's close field. For any other halt, if the stock has already been opened for that day and more than one price satisfies the above conditions, the system will select the price that minimizes the distance from the last

Nasdaq Market Center execution prior to the halt. If the security has not been opened for that day yet and more than one such price exists, the system will select the price that minimizes the distance from the previous Nasdaq Official Closing Price.

Imbalance Detection and Delay Periods. In order to facilitate the orderly opening of a security in which trading is halted, Nasdaq proposes to establish an Imbalance Detection Process that would measure an imbalance against a specified threshold, and to establish an Imbalance Delay if a liquidity imbalance exceeds that threshold. The Imbalance Detection Process and Imbalance Delay Period will be based upon the data contained in the NOII, which, as stated earlier, will be disseminated every five seconds throughout the Quotation Only Period of 15 minutes for IPOs and 5 minutes for all other halts. Specifically, Nasdaq will compare the Inside Match Price from the third to last NOII ($T - 15$ seconds to the Halt Cross) with that of the NOII immediately prior to the cross ($T - 1$ seconds) and determine whether the change in price exceeds a predetermined price or percentage variance threshold. The threshold will be set initially at 10 percent or fifty cents, whichever is higher. Nasdaq will monitor the threshold and adjust it from time to time upon reasonable notice to market participants.

If the price or percent variance yielded by the Imbalance Detection Process is within the threshold, trading will resume on schedule. If, however, the price or percent variance exceeds the threshold, Nasdaq will delay the Trade Resumption by 5 minutes in the case of IPOs and by 1 minute in the case of all other halts. For IPOs, the Imbalance Detection Process will be repeated at the end of the Imbalance Delay Period and a second delay ordered if the price change still exceeds the threshold. A third delay will be called if the price change exceeds the threshold at the end of the second Imbalance Delay Period. At the end of the third Imbalance Delay Period the Imbalance Detection Process will not be repeated and trading will resume. For all halts other

than IPOs, there can be only a single one-minute Imbalance Delay. At the end of the one-minute Imbalance Delay, Trade Resumption will occur. Each time Nasdaq systems impose an Imbalance Delay, Nasdaq will issue a Delay Notification to Nasdaq market participants.

Trade Resumption and Halt Cross. When the Quotation Only Period ends, whether or not followed by one or more Imbalance Delays, Nasdaq will send market participants the Trade Resumption message. In order to discourage gaming by market participants, Nasdaq will program the system to add a random delay of between zero and 15 seconds prior to issuing the Trade Resumption notification. When the Trade Resumption notification has been set, the system will conduct the Halt Cross.

The algorithm for the Halt Cross is similar to the Opening and Closing Crosses. First, the system will determine the price that maximizes the number of shares executed. If more than one such price satisfies that condition, the system will select the price that minimizes the imbalance of shares unexecuted and does not leave unexecuted shares at a superior price. If more than one price satisfies that condition also, the second tie breaker will depend on whether the cross is for an IPO or another halt. For an IPO, if more than one price satisfies the above conditions, the system will select the price that minimizes the distance from the Issuer's IPO price, which is found in the previous day's close field. For any other halt, if the security has already been opened for that day and more than one price satisfies the above conditions, the system will select the price that minimizes the distance from the last Nasdaq Market Center execution prior to the halt. If the security has not been opened for that day and more than one such price satisfies the above conditions, the system will select the price that minimizes the distance from the previous Nasdaq Official Closing Price.

The system will execute all orders in strict price/time priority starting with the displayed quotation size and then the reserve quotation size at the most aggressive price level, and then moving to successive price levels. All orders that are executable will be executed at the Halt Cross price. As with the Opening and Closing Crosses, only orders and quotations that are subject to automatic execution will participate in the Halt Cross.

For IPOs and for other halts where a security has not previously opened during the trading day, the Halt Cross execution will be reported to Nasdaq's trade reporting system with SIZE as the contra party on both sides of the trade, and then transmitted to the consolidated tape. The Halt Cross price and the associated paired volume will then be disseminated via the UTP Trade Data Feed ("UTDF") as a bulk print and on the Nasdaq Index Dissemination Service ("NIDS") and the Nasdaq Application Program Interface as the Nasdaq Official Opening Price ("NOOP"). For halts where a security has already opened during the trading day, the Halt Cross will be reported to Nasdaq's trade reporting system as a single trade, but it will not be identified as a bulk print and will not be disseminated as the NOOP. When the Halt Cross is complete, the execution functionality of the Nasdaq Market Center will open for regular trading.

If there is insufficient trading interest to perform the Halt Cross as described above, trading will resume via the modified opening process ("MOP") that is currently used to open Nasdaq stocks where no Opening Cross occurs as set forth in NASD Rule 4704(c). The MOP has several steps, each of which occurs in strict time priority. First, limit orders in the system that have a time-in-force of Day or GTC will wake-up. Of those, orders whose limit price does not lock or cross the book will be added to the book. Orders whose limit price does lock or cross the book will be placed in an "In Queue" state in strict time priority. Second, reverse Pegged orders will wake up. If the price created by the reverse Pegged order does not lock or cross the

book, the order will be placed on the book. If the price created by the reverse Pegged order would lock or cross the book, the order will be placed in “In Queue” status. Third, regular Pegged orders will wake up in strict time priority. Since these orders can only join the current highest bid or lowest offer price level, they will simply add depth to the book at that price. The In Queue orders also include market and IOC and IOX orders in strict time priority.

At this point, all eligible orders that would not lock or cross the market will be on the Nasdaq Market Center book, and all other eligible orders will be In Queue. The system will then process the “In Queue” orders, including market orders, in strict time priority order regardless of order type. IOC and IOX orders that are not executable will be canceled as is currently done. Orders with a time in force of DAY and GTC that are not executable will be added to the book in strict time priority. Once this process is complete, the system will begin processing the input queue as normal.

Where no Halt Cross occurs, the NOOP value will be the first Nasdaq Market Center execution following trade resumption unless the security has already traded during normal market hours on that trading day. That price will be disseminated via the NIDS and UTDF, and Nasdaq feeds. When resuming trading after a halt where the issue has already traded during normal market hours on that trading day, NOOP computation will be suppressed.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ in general, and with Section 15A(b)(6) of the Act,⁵ in particular, in that Section 15A(b)(6) requires the NASD’s rules to be designed, among other things, to protect investors and the public interest. Nasdaq’s current proposal is consistent with the NASD’s obligations under

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

these provisions of the Act because it will result in a more orderly opening for stocks that are the subject of a trading halt initiated under NASD Rule 4120. The proposed rule change will prevent the occurrence of locked and crossed markets in halted securities and will preserve price discovery and transparency that is vital to an effective opening of trading.

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

Nasdaq believes that the proposed rule change would impose no burden on competition that is 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

Nasdaq did not solicit or receive any written comments with respect to the proposal.

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

Within 35 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 Nasdaq consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.⁶

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:

⁶ Nasdaq requested that the Commission grant accelerated approval of the proposed rule change. The Commission will consider granting accelerated approval after the end of the comment period.

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-NASD-2006-015 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-NASD-2006-015. 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 also will be available for inspection and copying at the principal office of Nasdaq. 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-NASD-2006-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris
Secretary

⁷ 17 CFR 200.30-3(a)(12).