

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50176; File No. SR-NASD-2004-065)

August 10, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order
Approving Proposed Rule Change Regarding the Nasdaq Closing Cross

On April 19, 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 amend the Nasdaq Closing Cross. The proposed rule change was published for comment in the Federal Register on June 4, 2004.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The proposed rule change would amend NASD Rule 4709 to permit market participants to cancel Imbalance Only orders (“IOs”), Market on Close orders (“MOC”), or Limit on Close orders (“LOC”) between 3:50 p.m. EST and 3:55 p.m. EST where a firm is able to clearly demonstrate a legitimate error, including in the side, size, symbol, price or duplication of the order. Market participants would not be permitted to cancel IO, MOC, or LOC orders after 3:55 p.m. EST for any reason.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49783 (May 27, 2004), 69 FR 31650.

securities association.⁴ The Commission believes that the proposed rule change is consistent with Section 15A(b) of the Act,⁵ in general, and furthers the objectives of Section 15A(b)(6),⁶ 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 national market system, and in general, to protect investors and the public interest. The proposed rule change will allow Nasdaq greater flexibility to correct errors prior to the Nasdaq Closing Cross, which should result in a Nasdaq Closing Cross that more accurately reflects the trading in a particular security at the close.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

⁴ 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).

⁵ 15 U.S.C. 78o-3(b).

⁶ 15 U.S.C. 78o-3(b)(6).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-2004-065) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).