

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51859; File No. SR-NASD-2005-068)

June 16, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding a New Order Type for the Pre-market Trading Session

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 25, 2005, 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. 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 is filing a proposed rule change to establish a new order type called the Total Good-till-Canceled Order, which would be eligible for execution during the pre-market trading session.³ The text of the proposed rule change is set forth below. Proposed new language is in italics.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq neglected to complete this sentence. The staff of the Division of Market Regulation of the Commission therefore completed the sentence to include a summary description of the proposed rule change.

⁴ The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at www.nasd.com.

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4701. Definitions

(a) – (ss) **No Change.**

(tt) The term "Total Good-till-Cancelled" or "GTX Order" shall mean,

(a) for orders in ITS Securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open (9:30 a.m.) and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(b) for orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 4:00 p.m. and for execution between 8:00 a.m. and 4:00 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(uu) **No Change.**

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4704. Opening Process For Nasdaq-Listed Securities

(a) No Change.

(b) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders in Nasdaq-listed securities at 8:00 a.m. in the following manner to prevent the creation of locked/crossed markets.

(1) At 8:00 a.m., the system shall open in time priority all eligible Quotes as stated in paragraph (5) below and all eligible Orders in accordance with Rule 4701(ss), (tt)

and (uu). Quotes/Orders whose limit price would not lock or cross the book shall be added to the book in strict time priority. Quotes/Orders whose limit price would lock or cross the book shall be placed in an "In Queue" state except as provided in paragraph (4).

(2) **No Change.**

(3) Once the process set forth in subparagraphs (1)–(2) is complete, the system shall begin processing Quotes and X, GTX and IOX Orders in accordance with their entry parameters.

(4) – (7) **No Change.**

(c) – (d) **No Change.**

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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

On April 18, 2005, Nasdaq launched a voluntary pre-market trading session of the execution service of the Nasdaq Market Center that begins at 8:00 a.m. rather than at 9:25 a.m. Currently, Nasdaq has two extended hours order types that are eligible for execution during the pre-market trading session: the Total Day Order (“X Order”) described in NASD Rule 4701(ss)

and the Total Immediate or Cancel Order (“IOX Order”) described in NASD Rule 4701(uu). The X Order interacts with Nasdaq systems exactly as does the Day Order, except that it is eligible for display and execution during extended hours trading (trading that occurs outside normal market hours of 9:30 a.m. EST and 4:00 p.m. EST). Likewise, the IOX Order interacts with Nasdaq systems exactly as does the Immediate or Cancel Order (“IOC Order”) except that it too is eligible for execution during extended hours trading.

Nasdaq is proposing to introduce for Nasdaq-listed securities the “Total Good-till-Cancelled” or “GTX” order type that is currently available for exchange-listed securities only. The GTX Order for Nasdaq-listed securities would be processed precisely as the Good-till-Cancelled order, except that it would be available for display during the pre-market trading session in addition to the regular trading session. Specifically, Nasdaq proposes to amend NASD Rule 4701(tt) to make GTX Orders available for entry and display at 7:30 a.m., at which time they would receive a time stamp for purposes of determining time priority. In addition, Nasdaq is proposing to amend NASD Rule 4704(b)(1) to make GTX Orders eligible for execution between 8:00 a.m. and 4:00 p.m just as X and IOX orders are today.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ in general, and with Section 15A(b)(6) of the Act,⁶ 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 believes that its current proposal is consistent with the NASD’s obligations under these provisions of the Act because it would result in more orderly trading of

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

Nasdaq stocks. It would also promote price discovery, order interaction and transparency during the pre-market trading session by encouraging the submission of additional orders into the Nasdaq market center.

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

Nasdaq does not believe that the proposed rule change would result in any 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 neither solicited nor received written comments with respect to the proposed rule change.

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 self-regulatory organization 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.

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:

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-2005-068 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9309.

All submissions should refer to File Number SR-NASD-2005-068. 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 the filing also will be available for inspection and copying at the principal office of the NASD. 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-2005-068 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

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).