

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52170; File No. SR-NASD-2005-090)

July 29, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto to Modify Brut's Directed Cross Order Routing Process

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 July 19, 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 and II below, which Items have been prepared by Nasdaq. On July 28, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces the original filing in its entirety. See Amendment No. 1. The effective date of the original proposed rule change is July 19, 2005, and the effective date of the amendment is July 28, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 28, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 17 CFR 240.19b-4(f)(6).

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

Nasdaq proposes to modify how Directed Cross Orders are processed on its Brut Facility. Under the proposal, Brut Directed Cross Orders in exchange-listed securities that are directed to the New York Stock Exchange (“NYSE”) will first be routed to the Nasdaq Market Center for potential execution and thereafter to venues that provide automated electronic executions before being sent to the NYSE. Nasdaq will implement the proposed rule change on or about July 28, 2005, with the exact date being provided to market participants via a Head Trader Alert on www.nasdaqtrader.com.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].

4903. Order Entry Parameters

(a) No change.

(b) Brut Cross Orders—

(1) General. A Brut Cross Order is an order that is displayed in the System, and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. If marketable upon receipt against both orders in the System as well as other market centers, the order shall execute first against System orders. With the exception of Directed Cross Orders, once a Brut Cross Order is routed (in whole or in part) to another market center, any remaining unexecuted or returned portion of the order shall be posted in System and shall no longer be eligible for routing to other market centers. Directed Cross Orders in exchange-listed securities directed to the New York Stock Exchange shall remain at the exchange until executed or cancelled by the entering party.

(A) – (C) No change.

(D) A Brut Cross Order may also be designated as a Directed Cross Order.

A Directed Cross Order is an order that entered in the System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. [If,] [a]After being processed in the Brut System and exhausting available liquidity in the Brut System, the order is automatically routed by Brut to the specific market center selected by the entering party for potential execution. Any portion of the Directed Cross Order that remains unfilled after being routed to the selected market center will be returned to the entering party. For Directed Cross Orders in exchange-listed securities directed to the New York Stock Exchange if, after being processed in the Brut System and exhausting available liquidity in the Brut System, such orders will be automatically routed to the Nasdaq Market Center for potential execution and thereafter to other market centers that provide automated electronic executions before being sent to the New York Stock Exchange. Directed Cross Orders in exchange-listed securities directed to the New York Stock Exchange shall remain at the exchange until executed or cancelled by the entering party.

(E) Brut Cross Orders, including those designated as Aggressive Cross Orders, Super Aggressive Cross Orders and Directed Cross Orders, shall be executed pursuant to:

(i) The [To] Brut Book Order Process described in Rule 4905(a) to the extent marketable against an order resident in the System; and

(ii) With the exception of Directed Cross Orders, the Brut Order Routing Process described in Rule 4905(b) to the extent not marketable against an order resident in the System.

(F) No change.

(c) – (f) No change.

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4905. Order Processing

(a) Brut Book Order Process

Orders subject to the Brut Book Order Process shall be executed as follows:

(1) – (3) No change.

(4) Processing of Directed, Aggressive and Super Aggressive Cross Orders —

The System shall process crossed Directed and Aggressive Cross Orders, and locked or crossed Super Aggressive Cross Orders as follows:

(A) Displayed orders which are designated as “Directed Cross Orders” by a Participant shall be routed [to the market center selected by the entering party for potential execution by the System] as described in Rule 4903(b)(1)(D). This order type is available for Nasdaq-listed and Exchange-listed securities.

(B) – (C) No change.

(b) 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

Currently, a Brut Directed Cross order attempts to access any marketable liquidity within the Brut system before routing to the market center specified by the entering party as the final destination for the order. In this filing, Nasdaq proposes to modify the Brut Directed Cross Order process for orders in exchange-listed securities so that an order in an exchange-listed security for which the entering party designates the New York Stock Exchange ("NYSE") as the final destination will, after interacting with the Brut system, first be routed for potential execution to the Nasdaq Market Center, and thereafter to other market centers that provide automated electronic executions, before being sent to the NYSE.⁵ The routing priority of market centers other than Brut and the Nasdaq Market Center, will be based on the existence of appropriate linkages to those market centers as well as factors such as the response times and fees of the destination markets. The ranking of such intermediate destination electronic market centers may be adjusted on a real-time basis at Brut's discretion based on the above, or other, factors.

Nasdaq believes that by increasing the interaction of exchange-listed Directed Cross Orders with venues that provide automated electronic executions, the proposal will improve the overall speed and efficiency of executing such orders.

⁵ In addition, the proposal corrects Nasdaq Rule 4903(b)(1)(E)(i) to make clear that BRUT Cross Orders are processed using the Brut Book Order Process.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general and with Section 15A(b)(6) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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.

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

The proposed rule change has been filed by Nasdaq as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹ Consequently, because the foregoing rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

(iii) become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative period, which would make the proposed rule operative immediately.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.¹¹ Allowing the rule change to become operative immediately should permit Nasdaq to provide Brut users the benefits of enhanced routing functionality as soon as possible.¹² Consequently, the proposed rule change

¹⁰ Rule 19b-4(f)(6) under the Act also requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The NASD complied with this requirement.

¹¹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² The Commission notes that Nasdaq intends the proposed rule to enhance the speed and efficiency of order execution by increasing the opportunity for orders to be executed through automated electronic trading venues and notes that use of the Brut system and the Directed Cross Order is voluntary.

has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-NASD-2005-090 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-090. 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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 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-2005-090 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.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).