clarify the proposed rule change in direct response to issues raised by commenters and raise no new regulatory issues. Accordingly, the Commission believes that the accelerated approval of Amendment No. 4 is appropriate.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change, as amended, (SR–NASD–2004–043) is approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an associated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–6137 Filed 7–11–06; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54101; File No. SR–NASD–2005–140]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendments No. 1 and 2 Regarding the Nasdaq Crossing Network

July 5, 2006.

**I. Introduction**

On December 2, 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''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ('' Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Nasdaq Crossing Network. On February 28, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On April 24, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 5, 2006.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

**II. Description**

Nasdaq proposes to establish the Nasdaq Crossing Network for Nasdaq-listed and certain exchange-listed securities. The Nasdaq Crossing Network would provide a process for executing orders at a uniform reference price at a randomly selected point in time during a one-minute trading window, commencing at designated times during the regular hours session and the after-hours session. The trading windows would begin at 11 a.m., 1 p.m., and 3 p.m. (ET) during the regular hours session and at 4:30 p.m. (ET) during the after-hours session. For the series of Nasdaq Reference Price Crosses (''RPCs'') that occur during regular trading hours, market participants would place orders to be executed at the midpoint of the National Best Bid and Offer (''NBBO''). During the after-hours crossing session, eligible orders would be executed at the Nasdaq Official Closing Price (''NOCP'') for Nasdaq-listed securities or the official closing price of the primary market for securities listed on the NYSE, Amex or a regional exchange (''Primary Market Close'').

*Orders*

Orders entered into the Nasdaq Crossing Network would be either market or limit orders and would be designated by a time-in-force indicator.[6] These orders would not be displayed and would be executed only during an RPC. In addition, RPC orders would be entered in round lots only; no mixed or odd lot execution amount would be permitted. Orders may not be cancelled or replaced during the time of the cross, but they may be cancelled or replaced at any time before the cross occurs. Also, RPC orders would be required to be available for automatic execution. The RPC would have no order delivery capability, and no special orders could be accommodated.

*Nasdaq Reference Price Cross Priority and Reporting*

Upon initiation of the cross, available shares would be treated as if they were the same price and would be allocated on a pro-rata basis to eligible orders. Such shares would be allocated based on the original size of the order, not on the size of the remaining unexecuted portion of the order. If additional shares remain after the initial pro-rata allocation, those shares would continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. Any remaining shares would be allocated to the oldest eligible order.[7]

The executions would be reported to the market participants via Nasdaq Market Center execution reports as anonymous, single trades reflecting the aggregate shares executed. In addition, each execution would be reported to the Nasdaq Market Center trade reporting service for trade reporting, clearance and settlement.[8] Trades from the regular hours cross would be disseminated the regular way, and trades from the post close cross would be disseminated with a ''.PRP'' sale condition modifier.

*Locked or Crossed Markets*

In the event of a crossed NBBO at the time of a RPC during the regular hours session, the RPC would be delayed and would execute based on the midpoint NBBO when the quote becomes uncrossed. If the quote remains crossed, however, for five minutes beyond when the RPC normally would have occurred, the RPC would be cancelled and orders that are not designated for any future RPCs would be returned to the market participants. In the event of a locked NBBO at the time of a RPC during the regular hours session, the RPC would execute at the lock price.

*Reference Price Cross Circuit Breaker*

Nasdaq would establish a ''circuit breaker'' for RPCs that occur during the after-hours session to protect against unusual occurrences when the

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[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] In Amendment No. 2, Nasdaq made certain representations related to the applicability of Rule 11a2–2(T) under the Exchange Act and NASD IM–2110–2 (the ''Manning Rule'') to the proposed rule change. In addition, Nasdaq indicated its plan to request exemptive relief from Rule 10a–1 under the Exchange Act and NASD Rule 3350 (''Short Sale Rule''), as well as from Rule 602 of Regulation NMS (''Quote Rule''). Nasdaq also made clarifying edits to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 53745 (May 1, 2006), 71 FR 26579 (SR–NASD–2005–140) (''Proposing Release'').

[6] RPC orders would be marked with one of the following: (1) ''NXT,'' which indicates that the order would participate in the next scheduled regular-hours cross, with unexecuted shares being immediately cancelled back to the market participant after that cross; (2) ''REG,'' which indicates that the order would participate in all remaining crosses during the trading day with unexecuted shares being immediately cancelled back to the market participant after the final regular hours cross; or (3) ''ALX,'' which indicates that the order would participate in all remaining crosses in the current day with unexecuted shares immediately cancelled back to the market participant after the after-hours cross.

[7] The Proposing Release provides an example that illustrates these priority principles. *See supra* note 5.

[8] Nasdaq would submit each underlying trade to the National Securities Clearing Corporation for clearing. When Nasdaq becomes operational as a national securities exchange, these trades will be reported as ''covered sales'' of the exchange for the purposes of Section 31 of the Exchange Act. If the Crossing Network is launched before Nasdaq is operational as an exchange, the NASD will report these trades to NSCC for the purposes of Section 31 of the Exchange Act.

consolidated last sale price varies significantly from the NOCP or the Primary Market Close, based on information that becomes available after the market close. If the post-close cross would not execute within a preset boundary (the ''Threshold Percentage''),[9] the cross would not occur and be automatically cancelled by Nasdaq.

**III. Discussion**

The Commission finds that the proposed rule change is consistent with Section 15A of the Exchange Act [10] and the rules and regulations thereunder.[11] Specifically, the Commission finds the proposal to be consistent with Section 15A(b)(6) of the Exchange Act,[12] which requires the NASD's rules to be designed, among other things, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Nasdaq Crossing Network would provide market participants and investors with an additional mechanism for order execution. The Commission, in relying on Nasdaq's representation that participation in the RPCs would be voluntary and open to all Nasdaq market participants and would not result in any advantage to market participants that participate in RPCs over those market participants that do not choose to participate, believes that the Nasdaq Crossing Network is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq has proposed to execute RPC orders at a predetermined reference price at a randomly selected point in time during a one-minute trading window. The Commission notes that using the automated and random matching mechanism to execute an RPC cross should minimize the opportunity for manipulation. In addition, the Commission notes that, should Nasdaq desire to add more frequent crosses or to modify the time of the crosses in the future, it must submit a rule change to the Commission pursuant to 19(b) of the Exchange Act.[13] Because RPC orders that are executed during the regular hours session would be executed at the midpoint of the NBBO, it is possible that a Nasdaq member would trade ahead of a held customer order by less than $0.01 (*i.e.*, $0.005). The Commission believes that such an event would trigger a Manning Rule obligation.[14]

The Commission believes that the RPC is reasonably designed to promote just and equitable principles of trade. The Commission notes that any transaction on the Crossing Network effected in non-Nasdaq listed securities would be subject to the relevant short sale restrictions until Nasdaq requests and receives appropriate relief.[15] In addition, the Commission notes Nasdaq's representation that this proposed rule change will not alter the continued accuracy of the representations made by Nasdaq in the letter requesting interpretive guidance with respect to the application of Rule 11a2–2(T) under the Exchange Act that was submitted in connection with Nasdaq's application for registration as a national securities exchange.[16]

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[17] that the proposed rule change (SR–NASD–2005–140), as amended by Amendments No. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6–10923 Filed 7–11–06; 8:45 am]

**BILLING CODE 8010–01–P**

## SMALL BUSINESS ADMINISTRATION

### Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

**SUMMARY:** The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2006, subject to the availability of funds. Six states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 60 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the **ADDRESSES** section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

**DATES:** A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

**ADDRESSES:**

**Addresses of Relevant SBDC State Directors**

Mr. Al Salgado, Region Director, Univ. of Texas at San Antonio, 501 West Durango Blvd., San Antonio, TX 78207. (210) 458–2450.

Mr. Conley Salyer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East Charleston, WV 25301. (304) 558–2960.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711. (302) 831–2747.

[9] Initially, the Threshold Percentage would be set at ten percent, with a $0.50 difference between the NCOP or the Primary Market Close and the consolidated last sale price. Any changes to the Threshold Percentage would be made in advance of application and would be communicated to members. Nasdaq would publish any changes to the Threshold Percentage via its public NasdaqTrader Web site.

[10] 15 U.S.C. 78*o*–3.

[11] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s.

[14] *See supra* note 5.

[15] *Id.*

[16] *See* letter to Nancy M. Morris, Secretary, Commission, and Elizabeth King, Associate Director, Division of Market Regulation, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 12, 2006. The ''effect and execute'' rule provides exchange members with an exemption from the prohibition in Section 11(a) of the Exchange Act against a member of a national securities exchange effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies. In reliance on Nasdaq's representations in its letter, the Commission concluded in its order approving Nasdaq's exchange registration application that Nasdaq Exchange members that enter orders into Nasdaq Execution Systems satisfy the requirements of Rule 11a2–2(T) under the Exchange Act. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).