SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52156; File No. SR-NASD-2005-091)

July 28, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding the Nasdaq Opening Process for Initial Public Offerings

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 20, 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 proposal as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[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 from interested persons.

I. <u>Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change</u>

Nasdaq is filing a proposed rule change to modify Rule 4704(c)(1) to improve the opening of stocks that are the subject of an Initial Public Offering. Nasdaq has designated this proposal as non-controversial and has provided the Commission with a written description of the proposal in accordance with Rule 19b-4(f)(6)(iii) under the

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

4 17 CFR 240.19b-4(f)(6).

Act.[5] This rule proposal, which is effective upon filing with the Commission, would become operative on August 22, 2005.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[6]

* * * * *

**Rule 4704 Opening Process for Nasdaq-listed Securities**

(a) – (b) **No Change**.

(c) Nasdaq-listed securities [that are not designated by Nasdaq to participate in the] in which no Nasdaq Opening Cross occurs shall begin trading at 9:30 a.m. or, in the case of Nasdaq-listed securities in which trading is halted pursuant to Rule 4120(a), at the time specified by Nasdaq pursuant to Rule 4120 in the following manner:

(1) At 9:30 or at the time specified by Nasdaq pursuant to Rule 4120 the system shall suspend processing as set forth in paragraph (b) in order to open and integrate Regular Hours orders into the book in time priority; provided, however, that in the case of an Initial Public Offering halted pursuant to Rule 4120(a)(7), the Issuer's Initial Public Offering Price shall be entered on the bid side of the market as the oldest quotation.

(2) – (4) **No Change.**

(d) **No Change.**

* * * * *

---

5 17 CFR 240.19b-4(f)(6)(iii).

6 Changes are marked to the rule text that appears in the electronic NASD Manual found at the NASD Web site at (http://www.nasd.com).

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

Rule 4704(c)(1) currently provides that at 9:30 a.m. the system shall stop processing according to the pre-opening instructions set forth in Rule 4704(b) and begin to construct the Nasdaq book for the opening of trading. In the case of an Initial Public Offering ("IPO"), the first step in that process is to add quotes and orders in that security to the Nasdaq book in time priority.

Nasdaq has determined that the process currently set forth in Rule 4704(c) as applied to IPOs can be improved by programmatically entering the Issuer's Public Offering Price as the first quotation on the bid side of the market. The current process can create unnecessary volatility in an IPO because, unlike other securities, there are no existing quotes and orders in the Nasdaq book against which to integrate new quotes and orders. Due to this lack of a baseline against which new quotes and orders are measured before entry, the first quotes entered into the system for an IPO can vary significantly even in instances where the security ultimately opens at or near the IPO price. As a result, the initial executions in an IPO, even successive executions, can vary significantly, from each other and can create the appearance of volatility.

By entering the Issuer's Public Offering Price as the first quotation on the bid side of the market, Nasdaq hopes to provide a baseline against which subsequent quotes would be measured and thereby reduce the potential for volatility at the open. This should happen in two ways. First, displaying a quotation at the Issuer's Public Offering Price should encourage market participants to enter quotations and orders that are marketable at that price. Second, the execution sequence at the opening of trading would start from the Issuer's Public Offering Price and revolve around that price, rather than potentially starting from an extreme price and moving towards the Issuer's price.

This proposal represents a minor technical enhancement to Nasdaq's systems because Nasdaq already enters the Issuer's Public Offering Price into its systems. Nasdaq currently enters the Issuer's Public Offering Price as the previous day's closing price for an IPO, and uses it as the baseline for calculating the daily price percentage change for the IPO. Because the Issuer's Public Offering Price already resides within Nasdaq systems as the oldest entered price, it is a minor technical change to display that price as a quotation and to execute it in the approved opening process.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that it is designed, among other things, to protect investors and the public interest. Nasdaq believes that the current proposal is consistent with the NASD's obligations

[7] 15 U.S.C. 78o-3.

[8] 15 U.S.C. 78o-3(b)(6).

under these provisions of the Act because it would result in a more orderly opening for stocks that are the subject of an Initial Public Offering. The proposed rule change would decrease volatility during an important period of trading while preserving price discovery and transparency that is vital to an effective opening of trading.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, 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[9] and Rule 19b-4(f)(6) thereunder.[10]

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

9 15 U.S.C. 78s(b)(3)(A).

10 17 CFR 240.19b-4(f)(6).

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 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-2005-091 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 20549-9303.

All submissions should refer to File Number SR-NASD-2005-091**.** 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 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-2005-091 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.[11]

Margaret H. McFarland
Deputy Secretary

---

[11] 17 CFR 200.30-3(a)(12).