SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50089; File No. SR–CHX–2004–04]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Approving Proposed Rule Change To Revise CHX Article VI, Rule 5 To Correct a Reference to the Form Used for the Registration of New Branch Offices

July 26, 2004.

On January 7, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 update the reference to a form used by certain CHX member firms for the registration of new branch offices. The proposed rule change was published for comment in the **Federal Register** on April 13, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The proposed rule change would conform the Exchange's rules to its practice. Under the Exchange's rules, a member firm for which the Exchange is the designated examining authority must notify the Exchange before opening a new branch office. The Exchange's rules require that a member firm provide this notice by completing and submitting a MW–B form. The Exchange represents, however, that it currently asks its member firms to submit Schedule E to Form BD for that purpose. The proposed rule change would correct the reference to the form in CHX Article VI, Rule 5.

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 securities exchange.[4] The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[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. Specifically, the Commission believes that the Exchange's proposal will conform its rules to its practice.

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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CHX–2004–04) is approved.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17490 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49529 (April 6, 2004), 69 FR 19583.

[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. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50087: File No. SR–NASD–2004–090]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Nasdaq Closing Cross

July 26, 2004.

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 June 9, 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'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 23, 2004, Nasdaq amended the proposed rule change.[3] 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 proposes an amendment to NASD Rule 4709 to establish auxiliary procedures for administering the Nasdaq Closing Cross on certain significant trading days. Nasdaq intends to implement the proposed rule change immediately upon approval by the Commission.[4] The text of the proposed rule change is set forth below. Proposed new language is in *italics;* deletions are in [brackets].[5]

* * * * *

4709. Nasdaq Closing Cross

(a) No Change.

(b) No Change.

(c) Processing of Nasdaq Closing Cross.

(1)–(4) No Change.

(5) Auxiliary Procedures. When significant trading volume is expected at the close of regular hours, Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market. The determination to implement auxiliary procedures for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice President designated by the President. Nasdaq shall inform market participants of such auxiliary procedures as far in advance as practicable. Auxiliary procedures shall include:

(i) Setting an earlier time or times for the end of the order entry periods set forth in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order entry period as early as 3:40 p.m.

(ii) Setting an earlier time for the order modification and cancellation periods in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order modification and cancellation periods as early as 3:40 p.m.

(iii) Setting an earlier time for the dissemination times and frequencies set forth in paragraph (b) for the Order

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 22, 2004 (''Amendment No. 1''). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

[4] The Commission revised this sentence to reflect the fact that Nasdaq intends to implement the proposed rule change immediately upon approval by the Commission. Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (July 23, 2004).

[5] The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at www.nasd.com. There are no other pending or approved rule filings that would affect NASD Rule 4709(c).

Imbalance Indicator. Nasdaq may begin disseminating the Order Imbalance Indicator as early as 3:40 p.m. and may increase or decrease the frequency with which the Order Imbalance Indicator is disseminated.

(iv) Adjusting the threshold values set forth in subparagraph (c)(2)(D) to no greater than 20 percent.

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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, as amended, 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 March 11, 2004, the Commission approved Nasdaq's proposal to create a Closing Cross.[6] The Closing Cross is designed to create a robust close that allows for price discovery, and an execution that results in an accurate, tradable closing price. There are three components of the Nasdaq Closing Cross: (1) The creation of Market On Close (''MOC''), Limit on Close (''LOC'') and Imbalance Only (''IO'') order types; (2) the dissemination of an order imbalance indicator; and (3) Closing Cross processing in the Nasdaq Market Center at 4:00:00 that executes the maximum number of shares at a single, representative price that is the Nasdaq Official Closing Price.

In order to maintain a fair and orderly market on significant trading days, such as the reconstitution of indices administered by Standard and Poors and the Russell Investment Group and various options expiration days, it is necessary for Nasdaq to adjust certain aspects of the Closing Cross. These significant trading days are characterized by high volume during a limited period of time around the close due to market participants' desire to execute trades at the closing price used by various index providers. On such days, the effort required to maintain a fair and orderly market and the potential cost of not maintaining a fair and orderly market are both increased. Therefore, Nasdaq believes it is prudent to maintain flexibility to adjust certain aspects of the Closing Cross for these significant trading days.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, 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 section 15A(b)(6) requires that the rules of self-regulatory organizations be designed, among other things, to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the obligations under these provisions of the Act because it would result in the public dissemination of information that more accurately reflects the trading in a particular security at the close. Furthermore, to the extent a security is a component of an index, the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. The corresponding result should be trades executed at prices more reflective of the current market.

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

Nasdaq does not believe that the proposed rule change, as amended, 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

Written comments were neither solicited nor received.

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, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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, 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–2004–090 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–090. 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 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–2004–090 and should be submitted on or before August 23, 2004.

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[6] *See,* Securities Exchange Act Release No. 49406 (Mar. 11, 2004), 69 FR 12879 (Mar. 18, 2004) (SR–NASD–2003–173).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17489 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50091; File No. SR–NASD–2004–091]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Discontinue the Use of the Nasdaq NEWS Feature of the Nasdaq Workstation II, and To Provide a Different Standard for the Beginning and End of a Trading Halt

July 27, 2004.

On June 15, 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 discontinue the use of the Nasdaq NEWS feature of the Nasdaq Workstation II, and to provide for a different standard for the beginning and end of a trading halt. The proposed rule change was published for notice and comment in the **Federal Register** on June 25, 2004.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [4] and, in particular, the requirements of section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules be 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.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2004–091) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17492 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49898 (June 21, 2004), 69 FR 35696.

[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).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50090; File No. SR–NYSE–2004–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 104 and Rule 123

July 27, 2004.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 the Exchange. On April 5, 2004, the Exchange amended the proposed rule change.[3] On July 14, 2004, the Exchange again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend NYSE Rule 104.10 (Dealings by Specialists) to provide that customers may limit the ability of specialists to trade along with their orders or to invoke precedence based on size when the specialist is liquidating a position in a specialty security for its dealer account. Exchange Rule 123 (Records of Orders) is also proposed to be amended to require a record of any such request to the specialist to yield.

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

* * * * *

Rule 104.

Dealings by Specialists

* * * * *

Supplementary Material:

Functions of Specialists

.10 Regular Specialists.—Any member who expects to act regularly as specialist in any listed stock and to solicit orders therein must be registered as a regular specialist.

* * * * *

(6)(i) Transactions on the Exchange by a specialist for his own account in liquidating or decreasing his position in a specialty stock are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market and in this connection:

* * * * *

(B) the specialist should maintain a fair and orderly market during liquidation and, after reliquifying, should re-enter the market to offset imbalances between supply and demand. The selling of stock on a direct minus tick or a zero minus tick, or the purchasing of stock on a direct plus tick or a zero plus tick should be effected in conjunction with the specialist's re-entry in the market on the opposite side of the market from the liquidating transaction where the imbalance of supply and demand indicates that immediately succeeding transactions may result in a lower price (following the specialist's sale of stock on a direct minus tick or a zero minus tick) or a higher price (following the specialist's

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 2, 2004 and accompanying Form 19b–4 (''Amendment No. 1''). In Amendment No. 1, the NYSE clarified that, under the proposed rule change, customers may limit specialists from trading along with their orders and from invoking precedence based on size.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 13, 2004 and accompanying Form 19b–4 (''Amendment No. 2''). In Amendment No. 2, NYSE amended the proposed rule text and added additional explanatory material to clarify the proposal. Amendment No. 2 replaced the Exchange's original filing and Amendment No. 1 thereto in their entirety.