

under the Securities Exchange Act of 1934.

For further information please contact Kevin Campion, Lillian Hagen, or Alexandra Albright at (202) 942-0772.

2. The Commission will consider whether to adopt amendments to Schedule 14A under the Securities Exchange Act of 1934, and to Forms N-1A, N-2, and N-3 under the Securities Act of 1933 and the Investment Company Act of 1940. The amendments would require a registered management investment company to provide disclosure in its reports to shareholders regarding the basis for the board of directors' approval of an investment advisory contract. They would also enhance existing disclosure requirements in proxy statements regarding the basis for the board's recommendation that shareholders approve an advisory contract.

For further information, please contact Deborah D. Skeens at (202) 942-0562.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: June 2, 2004.

Jonathan G. Katz,
Secretary.

[FR Doc. 04-12844 Filed 6-2-04; 4:00 pm]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49783; File No. SR-NASD-2004-065]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Nasdaq Closing Cross

May 27, 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 April 19, 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. 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

The proposed rule change would amend NASD Rule 4709 governing the NASDAQ Closing Cross. Specifically, Nasdaq is proposing to clarify that market participants would not be able to cancel Imbalance Only orders ("IOs"), Market on Close orders ("MOC"), or Limit on Close orders ("LOC") after 3:50 p.m. EST except to correct a legitimate error, including side, size, symbol, price or duplication of an order. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4709. Nasdaq Closing Cross

(a) Definitions. For the purposes of this rule the term:

(1) No Change.
(2) "Imbalance Only Order" or "IO" shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against MOC or LOC orders. IO orders can be entered between 3:30 p.m. and 3:59:59 p.m., but they cannot be [cancelled or] modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. *IO orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order).* IO orders cannot be cancelled after 3:55:00 p.m. for any reason. IO sell (buy) orders will only execute at or above (below) the 4:00:00 SuperMontage offer (bid). All IO orders must be available for automatic execution.

(3) "Limit On Close Order" or "LOC" shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. LOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). LOC orders cannot be cancelled after 3:55:00 p.m. for any reason. LOC Orders will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution.

(4) "Market on Close Order" shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. *MOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order).* MOC orders cannot be cancelled after 3:55:00 p.m. for any reason. MOC orders will execute only at the price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.

(5) No Change.

(6) No Change.

(b) No Change.

(c) No Change.

* * * * *

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

Nasdaq is proposing to amend NASD Rule 4709 governing the NASDAQ Closing Cross to provide that market participants would be able to cancel IO, MOC, or LOC orders between 3:50 p.m. EST and 3:55 p.m. only by requesting Nasdaq to correct a legitimate error, including side, size, symbol, price or duplication of an order. Market participants would not be permitted to cancel IO, MOC, or LOC orders after 3:55 p.m. for any reason.

Nasdaq believes that providing the ability to cancel orders that contain legitimate errors would protect the marketplace from the potential distortions that inadvertent errors might cause during the Nasdaq Closing Cross. Other markets permit similar types of corrections to take place in advance of the actual close. For example, the New York Stock Exchange provides similar protection for on close orders. NYSE Rule 123C provides that "[b]etween 3:40

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

p.m. and 3:50 p.m., MOC orders are irrevocable, except to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order)."

Nasdaq Regulation staff in the TradeWatch section of MarketWatch ("MW") would perform the correction of legitimate errors based upon members' requests. The cancellation of IO, LOC, and MOC orders would be limited to circumstances where a firm could clearly demonstrate that it made a legitimate error. Because of the time constraints in operation at the end of the trading day, Nasdaq's staff would not be able to engage in a review of whether an the order entry was in fact erroneous.

Accordingly, the criteria that Nasdaq would use to determine whether an entry is a legitimate error would include:

Size of Order: If an order were to be entered with the wrong size and such erroneous size was greater than 1000 shares and the mistake in size was greater than 20% from the correct size, MW would cancel the order. Orders entered not exceeding the threshold factors would not be corrected.

Price of Order: If a LOC were to be entered at a price different from that intended by 10% or more, MW would cancel the order. If error were to be less than 10%, or if an order were to be entered as an MOC instead of LOC, MW would not take action.

Symbol: If a market participant were able to show it made a mistake in entering an order in the wrong stock by identifying the symbol for which it meant to enter an order, MW would cancel the incorrect order. Nasdaq would not make an entry for the firm for the intended symbol.

Side of Order: If the order were to be entered as a buy (sell) order when it should have been a sell (buy) order, MW would cancel the order.

Duplication of Order: If a firm were to duplicate an order, MW would cancel the duplicate order.

In all of the above instances, time permitting, TradeWatch would use its best efforts to cancel MOC, LOC, or IO orders that contain a legitimate error. The firm making the error would be required to contact TradeWatch by telephone in a timely manner and, during that communication, would be required to provide all necessary details regarding the specific order(s) entered in error to be cancelled. Failure to provide the necessary details in a timely manner would result in no cancellation. The firm seeking cancellation of an order would be required to provide objective proof that a mistake was made. Submission by e-mail or fax of an order ticket or other proof of the error would

be required to be made as soon as practicable and no later than 5:00:00 p.m. on the day of the cancellation. Failure to provide satisfactory information regarding the basis of the error would be a *per se* violation of the rule.

Because of the impact on price formation in the closing seconds of the trading day that cancellations could cause, Nasdaq staff would not attempt to cancel any orders after 3:55:00 p.m. All efforts by Nasdaq to act on cancellation requests would be made on a best efforts basis and might not be successful prior to 3:55:00 p.m. For example, firms that enter orders for a basket of stocks must understand that if the basket is large and involves a number of erroneous entries, Nasdaq may be unable to cancel all of the orders entered prior to 3:55:00 p.m.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,³ in general, and with section 15A(b)(6) of the Act,⁴ 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 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, Nasdaq believes the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. Nasdaq believes the corresponding result should be trades, or other actions, 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 will 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.

³ 15 U.S.C. 78o-3.

⁴ 15 U.S.C. 78o-3(b)(6).

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-2004-065 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-2004-065. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-065 and should be submitted on or before June 25, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-12688 Filed 6-3-04; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Small Business & Agriculture Regulatory Enforcement Ombudsman; Office of the National Ombudsman; Regulatory Enforcement Fairness Program; Public Federal Regulatory Enforcement Fairness Hearing; Region V Regulatory Fairness Board

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Tuesday, June 22, 2004, at 8:30 a.m. at the Business Technology Center, 1275 Kinnear Road, Columbus, OH 43212-1155, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Shannon Feucht in writing or by fax, in order to be put on the agenda. Shannon Feucht, Paralegal Specialist, SBA Columbus District Office, 280 N. High Street, Suite 1400, Columbus, Ohio 43215, phone (614) 469-6860 ext. 244, fax (614) 469-2391, e-mail: Shannon.feucht@sba.gov.

For more information, see our Web site at www.sba.gov/ombudsman.

Dated: May 27, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04-12652 Filed 6-3-04; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Small Business & Agriculture Regulatory Enforcement Ombudsman; Office of the National Ombudsman; Regulatory Enforcement Fairness Program; Public Federal Regulatory Enforcement Fairness Hearing; Region V Regulatory Fairness Board

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, June 10, 2004, at 9:30 a.m. at the Rochester Community and Technical College, Heintz Center, Room 114-116, 1926 College View Road, SE., Rochester, MN 55904, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Michael Lyons in writing or by fax, in order to be put on the agenda. Michael Lyons, Economic Development Specialist, SBA Minnesota District Office, 100 N. 6th Street, Suite 210-C, Minneapolis, MN 55403, phone (612) 370-2343, fax (202) 481-4556, e-mail:

Michael.lyons@sba.gov.

For more information, see our Web site at www.sba.gov/ombudsman.

Dated: May 27, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04-12653 Filed 6-3-04; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 4731]

Bureau of Political-Military Affairs; Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the sixteen letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663-2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: May 26, 2004.

Peter J. Berry,

Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.
March 29, 2004.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles sold commercially in the amount of \$100,000,000 or more.

The transaction contained in the attached certification involves the export to the Government of Australia of MK48ADCAP/CBASS ACP Torpedoes, associated equipment and technical data.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 008-04.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives.
March 30, 2004.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of \$50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia, Ukraine and Norway related to the launch of commercial satellites from the Pacific Ocean utilizing a modified oil platform beyond the period specified in DTC 015-04; DTC 023-03 dated February 28, 2003; DTC 002-03 dated January 24, 2003; DTC 148-02 dated July 26, 2002; DTC 123-02 dated May 22, 2002; DTC 023-02 dated May 1, 2002; DTC 048-01 dated April 30, 2001; DTC 026-00 dated May 19, 2000; DTC

⁵ 17 CFR 200.30-3(a)(12).