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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or 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, 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 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through June 30, 2004, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to SR–CHX–2003–38. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2003–38 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30704 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

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

[10] 17 CFR 240.19b–4(f)(6).

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

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48878; File No. SR–NASD–2003–173]

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

December 4, 2003.

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 November 25, 2003, 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

Nasdaq's proposed rule change would establish the Nasdaq Closing Cross for certain Nasdaq National Market securities. There would be three components of the Nasdaq Closing Cross: (1) The creation of On Close and Imbalance Only order types ("Nasdaq Closing Orders") (2) the dissemination of an order imbalance indicator via electronic means; and (3) closing cross processing in SuperMontage at 4:00:00 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Closing Price. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

Rule 4709 Nasdaq Closing Cross

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

(1) "Imbalance" shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC or IO order shares at any given time.

(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 an Imbalance. IO orders can be entered between 9:30:01 a.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 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. and 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. and will execute only at the

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

[2] 17 CFR 240.19b–4.

price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.

(5) ''Nasdaq Closing Cross'' shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.

(6) ''Order Imbalance Indicator'' shall mean a message disseminated by electronic means containing information about MOC, LOC, and IO orders and the price at which those orders would execute at the time of dissemination.

(b) Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 30 seconds until 3:55, and then every 15 seconds until 3:58, and then every 5 seconds until 3:59, and then every second until market close. The Order Imbalance Indicator shall contain the following real time information:

(1) The number of shares represented by MOC, LOC, and IO orders that are paired at the current SuperMontage inside;

(2) The MOC and LOC imbalance at the current SuperMontage best bid or offer, depending on the direction of the imbalance;

(3) The buy/sell direction of any imbalance at the current SuperMontage inside; and

(4) An indicative price range at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which that range varies from the then current SuperMontage inside. The indicative price range contains the following values:

(A) The price at which the MOC, LOC, and IO orders in the Nasdaq Closing Book would execute, and

(B) The price at which both the MOC, LOC, and IO orders and all executable orders in SuperMontage (excluding volume that is available only by order delivery) would execute.

(C) If no price satisfies subparagraph (A) or (B) above, Nasdaq will disseminate the phrase ''market buy'' or ''market sell''.

(c) Processing of Nasdaq Closing Cross.

(1) The Nasdaq Closing Cross will begin at 4:00:00, and after hours trading will commence when the Nasdaq Closing Cross concludes.

(2) The Nasdaq Closing Cross will occur at the price that:

(A) Maximizes the number of shares executed. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(B) Minimizes the imbalance of on-close orders. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(C) Minimizes the distance from the 4:00:00 SuperMontage bid-ask midpoint.

(D) If the Nasdaq Closing Cross price established by subparagraphs (A) through (C) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC and IO orders and fewer than all continuous orders that are available for automatic execution in SuperMontage would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:

(A) MOC orders, with time as the secondary priority;

(B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(C) LOC orders, displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority;

(D) Reserve interest and IO orders at the Nasdaq Closing Cross price with time as the secondary priority; and

(E) Unexecuted MOC, LOC, and IO orders will be canceled.

(4) All orders executed in the Nasdaq Closing Cross will be executed at the Nasdaq Closing Cross price and reported to the consolidated tape with SIZE as the contra party. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.

* * * * *

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 establish the Nasdaq Closing Cross, a new process for determining the Nasdaq Official Closing Price (''NOCP'') for the most liquid Nasdaq stocks. Nasdaq represents that the proposed Nasdaq Closing Cross is designed to create a more robust close that would allow for price discovery, and an execution that would result in an accurate, tradable closing price. SuperMontage would operate as it does today up until the close. Nasdaq would create two new on-close orders types (''Nasdaq Closing Orders'') that would be executable only during the SuperMontage closing cross. Information about the contents and likely market clearing price of the Nasdaq Closing Orders would be disseminated. In the closing process, the Nasdaq Closing Orders and SuperMontage continuous orders would be brought together to create a single Nasdaq Closing Cross. To be executable, all orders and quotes would be required to be subject to automatic execution to avoid the uncertainty and delay associated with order delivery trading interest. Following the Nasdaq Closing Cross, after hours trading would proceed as it does today.

There would be three components of the Nasdaq Closing Cross: (1) The creation of On Close and Imbalance Only order types; (2) the dissemination of an order imbalance indicator via a Nasdaq proprietary data feed; and (3) closing cross processing in SuperMontage at 4:00:00 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Closing Price. Each component is described in detail below.

On Close and Imbalance Only Orders In The Closing Book. The closing process would begin with market participants entering On-Close and Imbalance Only order types in SuperMontage. On-Close orders would be able to be un-priced and entered as market-on-close (''MOC''), or priced and entered as limit-on-close (''LOC''). On-Close orders would be able to be entered, cancelled, and corrected between 9:30:01 a.m. EST and 3:50:00 p.m. but they would not be displayed in the Nasdaq Order Display Facility or disseminated via any data feed. On-Close orders, both MOC and LOC, would execute only at the price determined by the closing Nasdaq cross. Thus, LOC orders would be subject to price improvement if the buy (sell) order were to be greater than (less than) the closing price.

Imbalance Only (''IO'') orders would supplement the liquidity provided by On Close orders and they would execute only within the closing cross against any imbalance in liquidity. IO order types would be required to be priced limit orders; SuperMontage would reject IO orders entered without a price. Like On Close orders, IO orders would not be displayed in the Nasdaq Order Display Facility or disseminated via any data feed. IO orders would be able to be entered until 3:59:59, but they would not be able to 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 sell orders would only execute at or above the 4:00:00 SuperMontage inside offer, and IO buy orders would only execute at or below the 4:00:00 SuperMontage inside bid.

The On Close and IO orders would constitute the ''Nasdaq Closing Orders'' which, as described below, would serve as the basis for the Closing Cross Order Imbalance Indicator.

Order Imbalance Indicator. At 3:50:00, Nasdaq would begin the closing auction calculation and would disseminate an order imbalance indicator on Nasdaq's proprietary data feed. Imbalance information would include several pieces of information regarding the closing cross: (1) The number of shares represented by MOC, LOC, and IO orders that paired at the current SuperMontage inside; (2) the MOC and LOC imbalance at the current SuperMontage best bid or offer, depending on the direction of the imbalance; (3) the buy/sell direction of that imbalance, and the current inside price; (4) an indicative clearing price range at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time; and (5) the percent by which that indicative price varies from the SuperMontage inside price. The indicative clearing price range would be bounded on the far side by the price at which the MOC, LOC, and IO orders would clear with only each other. It would be bounded on the near side by the price at which the Nasdaq Closing Orders and the SuperMontage continuous orders (excluding volume available only by order delivery) would clear. Where no clearing price exists, Nasdaq would disseminate the phrase ''market buy'' or ''market sell.''

Nasdaq would disseminate the order imbalance indicator via the Nasdaq Total View data feed at no additional charge to subscribers. The indicator would be disseminated beginning at 3:50:00 and then at more frequent intervals as the time to market close decreases: every 30 seconds beginning at 3:50, every 15 seconds beginning at 3:55, every 5 seconds beginning at 3:58, and every second from 3:59 until market close.

For example, if the SuperMontage Book at 3:59:00 pm were to contain the following orders:

BUY ORDERS

Size	Price
4000	*19.99*
3000	19.98
2000	19.97
10000	19.96

SELL ORDERS

Size	Price
500	*20.00*
35000	20.01
3000	20.02
10000	20.04

And the Nasdaq Closing Orders at that time contains the following orders:

BUY ORDERS

Size	Price
3000	20.02
8000	*Market*
1000	19.99
4000	19.97
500	19.97

SELL ORDERS

Size	Price
5000	*Market*
3000	19.98
1000	20.00
1000	20.02
1000	19.98

Nasdaq would disseminate the following indicative closing information:

- 10,000 shares paired at $20.00;
- 1,000 share buy imbalance;
- Indicative Price Range: $20.01–20.02; and
- Variance from SuperMontage inside of less than 10 percent.

Nasdaq Closing Cross. The Nasdaq Closing Cross would begin at 4:00:00 and, thus, would not affect SuperMontage processing that exists today during normal market hours. The Nasdaq Closing Cross would conclude at approximately 4:00:05 at which time the closing executions would be reported to the consolidated tape for Nasdaq securities and after hours trading would commence just as it does today. The Nasdaq Closing Cross would be designed to accomplish three goals in decreasing priority: (1) Maximize the number of shares executed, (2) minimize the imbalance of on-close orders; and (3) minimize the distance from the 4:00:00 SuperMontage inside bid-ask midpoint.

If the Nasdaq Closing Cross price were to be selected and fewer than all Nasdaq Closing Orders and all continuous orders available for automatic execution in SuperMontage would be executed, the system would execute orders in the following priority:

(1) MOC orders, with time as the secondary priority;

(2) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(3) LOC orders, displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority; and

(4) Reserve interest and IO orders at the Nasdaq Closing Cross price with time as the secondary priority.[3]

All executable orders would be executed at the Nasdaq Closing Cross price and reported to the consolidated tape with SIZE as the contra party. The Nasdaq Closing Cross price and the associated paired volume would then be disseminated via the UTP Trade Data Feed (''UTDF'') as the NOCP.

For example, if the continuous SuperMontage and Nasdaq Closing Orders were to contain the following orders:

[3] Short sale orders that participate in the Nasdaq Closing Cross would be required to comply with the applicable Nasdaq short sale rule.

BUY ORDERS

Entry time	Side	Size	Price
3:00	Buy—OC	8000	*Market*
2:30	Buy—OC	3000	20.02
3:31	Buy—Day	4000	19.99
3:35	Buy—OC	1000	19.99
3:59	Buy—Day	3000	19.98
3:59	Buy—Day	2000	19.97
3:40	Buy—OC	4000	19.97
3:52	Buy—IO	500	19.97
3:30	Buy—Day	10000	19.96

SELL ORDERS

Entry time	Side	Size	Price
2:45	Sell—OC	5000	*Market*
3:00	Sell—OC	3000	19.98
3:55	Sell—IO	1000	19.98
3:59	Sell—Day	500	20.00
3:35	Sell—IO	1000	20.00
3:48	Sell—Day	5000	20.01
3:31	Sell—GTC	3000	20.02
3:40	Sell—OC	1000	20.02
3:30	Sell—Day	10000	20.04

The Nasdaq Closing Cross would execute 11,000 shares at $20.01.

Nasdaq would establish a circuit breaker for the closing cross to protect against very unusual occurrences where the price discovery mechanism at the close did not function as expected. Nasdaq has selected two benchmark values representing market conditions approximately five seconds prior to the close: (1) The Volume Weighted Average Nasdaq Inside (''VWAI'') over the period from 3:59:54 to 3:59:57; [4] and (2) the Volume Weighted Average Price (''VWAP'') based upon SuperMontage executions over the period from 3:59:55 to 4:00:00.[5] After the Nasdaq Crossing Price is selected, Nasdaq would then compare it to the two benchmarks. If the expected Nasdaq Crossing Price were to be within a preset boundary of either the VWAI or the VWAP, the cross would occur at the expected Nasdaq Crossing Price.

If the expected Nasdaq Crossing Price were to be outside a preset boundary (''Threshold Percentage'') of both benchmarks, Nasdaq would change the Nasdaq Crossing Price such that it would be within the threshold percentage. The Threshold Percentage would be set by Nasdaq officials and would vary based on market conditions and experience with the close. Nasdaq would publish the Threshold Percentages via its public NasdaqTrader Web site.[6] The modified price would then follow the principles for ordinary crosses: Maximizing volume executed, minimizing the imbalance of On Close orders, and minimizing the distance from the 4:00 SuperMontage bid-ask midpoint (unexecuted shares would be canceled).

Implementation. Upon initial implementation, Nasdaq proposes to apply the closing process to its most liquid issues, namely securities included in the Nasdaq 100 Index, the S&P 500 Index, and the Nasdaq Biotech Index. Nasdaq would have the authority to apply the closing cross to any and all Nasdaq NMS securities. For those securities, the Nasdaq Closing Cross price would be the NOCP. Issues that are not subject to the closing auction would continue to have their NOCP value calculated and disseminated as today. All NOCP values will be disseminated by 4:02:00 with the .M sale condition modifier.

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 Section 15A(b)(6) requires the NASD's rules to be designed, among other things, to protect investors and the public interest. Nasdaq's 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 when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

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.

[4] For example, Nasdaq would take every Nasdaq Inside Ask in effect 3:59:54:000 through 3:49:56:999, weight the Ask Price by the product of the time (milliseconds) the quote was in effect and the displayed size (roundlots). The weighted average of all the Inside Ask updates during the indicated time period would be the VWAI Ask for the stock.

[5] For example, Nasdaq would take every last sale eligible SuperMontage Trade report between 3:59:55:000 and the start of the closing process and weight the trade price by the reported volume. The weighted average of all the SuperMontage trade reports would be the VWAP for the stock.

[6] Nasdaq would also be able to also employ the Benchmark Values and Threshold Percentages for determining the Nasdaq Official Closing Price for stocks that are not included in the Nasdaq Closing Cross.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–173. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–173 and should be submitted by January 2, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30699 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48877; File No. SR–NASD–2003–179]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

December 4, 2003.

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 December 1, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), 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. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through June 30, 2004, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 (''IM–3350'').[5] Without such an extension this standard would terminate on December 1, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through June 30, 2004. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[6] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

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 its proposal and discussed any comments it received regarding the proposal. 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 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[7] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on December 1, 2003.[8] Nasdaq now proposes to extend, through June 30, 2004, that pilot program. Extension until June 30th, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[9] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that

[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).

[5] In its filing, Nasdaq inadvertently referred to text changes in subparagraph (b)(1) of IM–3350 instead of subparagraph (b)(2). Changes to NASD Rule 3350 and IM–3350 renumbered subparagraph (b)(1) as subparagraph (b)(2). *See* Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002). Telephone call between Gregory J. Dumark, Division of Market Regulation, Commission, and Thomas P. Moran, Office of General Counsel, Nasdaq.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[8] Securities Exchange Act Release No. 47309 (February 4, 2003), 68 FR 6981 (February 11, 2003).

[9] *See* SR–NASD 2002–09.