

## 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;<sup>4</sup> and (2) the Volume Weighted Average Price ("VWAP") based upon SuperMontage executions over the period from 3:59:55 to 4:00:00.<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> in general, and with Section 15A(b)(6) of the Act,<sup>8</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).