For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3300 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50683; File No. SR–NASD–2004–107]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Computer Generated Quoting in Exchange-Listed Securities

November 17, 2004.

I. Introduction

On July 12, 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 allow market makers to engage in Computer Generated Quoting (''CGQ'') in exchange-listed securities. The proposed rule change was published for comment in the **Federal Register** on October 12, 2004.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposed to eliminate NASD Rule 6330(d), which governs CGQ in exchange-listed securities. NASD Rule 6330(d) prohibits the practice of automatically, and without cognizable human intervention, updating a market maker's quote to keep the market maker away from the inside market. NASD Rule 6330(d)(2) however, contains exceptions to the general prohibition in CGQ, including exceptions for conduct that is consistent with the Commission's Order Handling Rules, and for CGQ that equals or improves either or both sides of the national best bid or offer (''NBBO'') or adds size to the NBBO.

The limitations contained in NASD Rule 6330(d) were originally implemented because of capacity constraints that Nasdaq has stated no longer persist. Under procedures implemented by the Consolidated Tape Association,[4] Nasdaq, as well as any other Participant, now has the opportunity to request additional capacity to accommodate increased quoting, while bearing the expense. Under the proposal, market makers would be able to engage in CGQ without limitations.

III. Discussion and Commission Findings

In the past, the Commission has recognized concerns regarding the accessibility of CGQ and the impact of such quoting on system capacity.[5] Nasdaq has assured the Commission that these capacity constraints no longer persist, since it is now able to request additional capacity in order to accommodate increased quoting. Thus the Commission believes that lifting the current restrictions on CGQ in exchange-listed securities should not cause a significant impact upon system capacity and data traffic. Furthermore, the Commission notes that various markets have moved towards automated systems to make their markets more efficient.[6]

In addition, the Commission notes that permitting automated generation of quotations will likely contribute to more accurate and informative quotations because market makers are able to use automated measures to produce accessible quotations that add value to the market without limitation. Permitting the use of CGQ by market makers allows them to utilize technology to fulfill their quotation obligations efficiently. Moreover, allowing market makers to utilize technology in this manner reduces any competitive disadvantage that the previous auto-quote ban may have created, with the potential to benefit investors by improving liquidity, transparency, and order interaction in the Nasdaq Market Center.

Section 8(d)(ii) of the Intermarket Trading System (''ITS'') Plan governs the adoption and implementation of trade-through rules by ITS Participants. In February 2000, the Commission granted NASD an exemption from the provisions of the ITS Plan relating to automated quote generation by market makers trading non-Rule 19c–3 and Rule 19c–3 securities,[7] thus allowing market makers to engage in CGQ in exchange-listed securities, under particular circumstances. The Commission has extended the exemption annually since December 2000.[8] In granting the exemption, the Commission determined that the exemption was consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of, a national market system because it allowed market makers to continue to participate in the market for non-Rule 19c–3 securities and to compete for order flow in Rule 19c–3 securities. The Commission is not aware of any negative effects from the use of computer generated quotations by Nasdaq market makers during the nearly four year period covered by the Commission's exemption.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the provisions of section 15A of the Act [9] in general, and section 15A(b)(6) of the Act,[10] which requires that the rules of the NASD foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market.

IV. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act [11] the proposed rule change (SR–NASD–2004–107) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3301 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

[15] 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. 50478 (September 30, 2004), 69 FR 60692.

[4] *See* Securities Exchange Act Release No. 47030 (December 18, 2002), 67 FR 78832 (December 26, 2002).

[5] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Execution Obligations'').

[6] *See* Securities Exchange Act Release No. 49749 (February 26, 2004), 69 FR 11126 (March 9, 2004) (''Proposed Regulation NMS'').

[7] *See* Letter to Eugene A. Lopez, Senior Vice President, Nasdaq, from Robert L.D. Colby, Deputy Director, Division of Market Regulation (''Division''), Commission, dated February 11, 2000.

[8] *See* Letters to Eugene A. Lopez, Senior Vice President, Nasdaq, from Robert L.D. Colby, Deputy Director, Division, Commission dated December 22, 2000, and December 21, 2001; Letter to Eugene A. Lopez, Senior Vice President, Nasdaq, from Alden S. Adkins, Associate Director, Division, Commission, December 31, 2002; and Letter to Eugene A. Lopez, Executive Vice President, Nasdaq, from David S. Shillman, Associate Director, Division, Commission, dated December 23, 2003.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).