deliveries (those obligating the participant to pay $15 million or more) and certain payment orders (those obligating the participant to pay $1 million or more) which are directed to its account by any other participant before its account is updated. Certain other transactions, including substantially overvalued deliveries and deliveries initiated just prior to cutoff, are automatically subject to the RAD function.

Under DTC's current procedures, RAD is not available for MPs initiated by DTC on behalf of presenting participants because MPs are known in advance and can generally be presumed to be valid obligations due and payable. Moreover, the processing of MPs occurs early in the processing day in the expectation that the associated money credits posted to the accounts of presenting participants will be available to support the efficient subsequent processing of new MMI issuances. Finally, subjecting all MMI maturities to RAD would impose an operational burden on IPAs, who would be required to authorize each MP in order for the transaction to be completed.

Since the events of September 11, IPAs have raised a concern that in such emergency situations the random nature of DTC's process for updating recycling MPs prevents the IPAs from aligning the funding of maturities with offsetting issuances of the same issue or with decisions to activate back-up lines of credit in order to fund a particular issuer's maturing obligations.

The purpose of the proposed rule change is to provide to IPAs in the event of a systemic, operational, or other crisis that could result in MMI maturities not being funded in the normal course a mechanism for dealing with the nonpayment of maturities that does not have the consequences of a ''refusal to pay.'' Under the proposed rule change, in extraordinary circumstances [3] and only after consultation with its regulators, DTC at its option could direct MPs for MMIs maturing on the days following the crisis to a new contingency RAD-like feature. This would afford the IPA an opportunity to review and approve MPs prior to having them processed into its account and would provide the IPA additional measures of control over its financial obligations to particular MMI issuers in times of unusual market stress. DTC would continue this procedure at its

option until processing conditions returned to a more normal state.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it will promote the prompt and accurate settlement of securities transactions and will be implemented in a manner that is consistent with DTC's risk management controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

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

The proposed rule change was reviewed with members of The Bond Market Association's Money Market Operations Committee in December 2001 and the Commercial Paper Issuers Working Group in January 2002. They agreed that using the proposed RAD-like feature offers many advantages in that it is a process that can be rapidly deployed by DTC on the days following a disaster and that allows IPAs to control the presentation of maturing paper into their accounts and thereby better manage their exposures in times of unusual market stress.

Some members of these industry groups expressed concern that subjecting MPs to RAD-like controls might impose a difficult operational burden on IPAs if they would be required to authorize each MP individually. In this connection, a custodian bank pointed out that a significant delay in the availability of credits from successfully processed MPs (which but for the need for RAD approvals would have been processed in the early morning hours) could leave custodians with higher than usual debits and therefore could potentially cause the recycling of other delivery versus payment transactions. To address these concerns, the RAD-like controls developed by DTC will provide the IPA with several options to facilitate its processing, including the ability to approve all MPs as a group.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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.

VI. 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. 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 will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2002–04 and should be submitted by June 18, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–13192 Filed 5–24–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45968; File No. SR–NASD–2002–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 thereto by the National Association of Securities Dealers, Inc. Relating to the Integrated Processing of Odd-Lot Share Amounts in Nasdaq's SuperMontage System

May 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

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[3] Such circumstances would be evidenced by the closing of one or more national securities exchanges (*e.g.,* the New York Stock Exchange or Nasdaq).

[4] 17 CFR 200.30–3(a)(12).

(''Act''), [1] and Rule 19b-4 thereunder, [2] notice is hereby given that on March 25, 2002, 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, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on April 23, 2002.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on May 17, 2002.[4] Nasdaq filed Amendment No. 3 to the proposed rule change on May 17, 2002.[5] 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

Nasdaq proposes changes to several NASD Rules governing the operation of Nasdaq's future Order Display and Collector Facility (''NNMS'' or ''SuperMontage'') to allow the system to accept, integrate, process, and otherwise facilitate the interaction of orders of less than one round-lot (100 shares) with all other SuperMontage quotes and orders.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.[6]

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (cc) No Change.

(dd) The term ''Reserve Size'' shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a

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

[2] 17 CFR 240.19b–4.

[3] On April 23, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] On May 17, 2002, the Exchange filed a form 19b–4, which replaced the original filing in its entirety (''Amendment No. 2'').

[5] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 17, 2002 (''Amendment No. 3''). In Amendment No. 3, Nasdaq replaced the text of NASD Rule 4707 in its entirety.

[6] The Commission notes that it has made technical, non-substantive change to the proposed rule text. Nasdaq has committed to submit an amendment conforming to these changes. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Kelly Riley, Senior Special Counsel, Division, Commission, on May 17, 2002.

proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is [executed] *reduced by executions to less than a normal unit of trading.*

(ee) through (ff) No Change.

(gg) The term ''Legacy Quote'' shall mean the quotation mechanism that existed in Nasdaq on or before July 1, 2002, and that does not permit the entry of Quotes/Orders at multiple price levels in the NNMS.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders —

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) No Change.

(B) A Non-Directed Order must be a market or marketable limit order, [must be a round-lot or a mixed-lot,] must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant may be designated as Immediate or Cancel.

(C) through (E) No Change.

(2) No Change.

(b) Directed Orders A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) through (3) No Change.

(c) No Change.

(d) Order Size—Any [round or mixed-lot] order *in whole shares* up to 999,999 shares may be entered into the NNMS for normal execution processing. [Odd-lot orders, and the odd-lot portion of a mixed-lot, are subject to a separate execution process, as described in Rule 4710(e).]

(e) No Change.

[(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed-lot order, shall be processed as described in Rule 4710(e).]

* * * * *

4707. Entry and Display of Quotes/Orders

(a) No Change.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:

(1) No Change.

(2) No Change.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed-lots, and Rounding—The Nasdaq system (and all accompanying data feeds) shall be capable of displaying trading interest in round-lot amounts. For quote display purposes, Nasdaq will aggregate all shares, including odd-lot share amounts, entered by a Quoting Market Participant at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a Quoting Market Participant's trading interest that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed-lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system will refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.

(c) through (e) No Change.

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4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) No Change.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute *the full size of such order (even if the delivered order is a mixed-lot or odd-lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN* [such order in a manner consistent with the Firm Quote Rule].

(iii) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)—(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' Displayed Quotes/Orders and Reserve Size, including Agency Quotes (if applicable), in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. *For purposes of the execution algorithms described in paragraphs (i), (ii) and (iii) below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage,*

remain in system and available for execution.

(i) through (iv) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution. [; provided, however, that if an NNMS order that is a mixed-lot, the system will only deliver a Liability Order or an execution for the number of round-lots contained in the mixed-lot order, and will only decrement the size of a Displayed Quote/Order by the number of shares represented by the number of round-lots contained in the mixed-lot order. The odd-lot portion of the mixed-lot will be executed at the same price against the NNMS Market Maker next in the odd-lot rotation, as described in subparagraph (e) of this rule.]

(i) through (iv) No Change.

(D) through (E) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to [zero] *an amount less than one normal unit of trading* due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant, or in the absence of such size-level designation, to the automatic refresh size. *The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order.* To utilize the Reserve Size functionality, a minimum of a normal unit of trading must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least a normal unit of trading. This functionality will not be available for use by UTP Exchanges.

(B) Auto Quote Refresh (''*AQR*'')— Once an NNMS Market Maker's Displayed Quote/Order size and Reserve Size on either side of the market in the security has been decremented to [zero] *an amount less than one normal unit of trading* due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to [zero] *an amount less than a normal unit of trading,* by a price

interval designated by the NNMS Market Maker; and

(ii) No Change.

(iii) This functionality shall produce an Attributable Quote/Order. [In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Attributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.]

(iv) *The AQR functionality described in this subparagraph shall only be available for use in connection with a NNMS Market Maker's ''Legacy Quote.''* [An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.]

(3) through (8) No Change.

(c) No Change.

(d) No Change.

[(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process— All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market maker is registered.

(2) Execution Process

(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.

(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(C) For odd-lots that are part of a mixed-lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(E) After the NNMS system has executed an odd-lot against an NNMS

Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.]

[(f)] *(e)* UTP Exchanges
(1) through (6) No Change.

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4715. Adjustment of Open Quotes and/ or Orders

NNMS will automatically adjust the price and/or size of open quotes and/or orders resident in the system in response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent ($0.01), as follows:

(a) No Change.
(b) No Change.
(c) Buy Orders—Buy side orders shall be adjusted by the system based on the particular corporate action impacting the security (i.e. Cash dividend, stock dividend, both, stock split, reverse split) as set forth below:

(1) No Change.
(2) Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked ''Do Not Increase'', the size of the order shall be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest [round-lot] *share.*

(3) No Change.
(4) No Change.
(5) No Change.
(d) 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

Currently, the rules of SuperMontage provide for the voluntary participation of market makers in the execution of odd-lot orders. Only those market makers that voluntarily set individual odd-lot exposure limits on specific securities would have odd-lot orders sent to them on a rotating basis for execution. Resulting executions would reduce the market maker's odd-lot exposure limit, but not its displayed quote, and the system would not deliver an additional execution against the same odd-lot market maker until at least 5 seconds have elapsed since the market maker's last previous odd-lot execution in the security. For mixed-lot orders, SuperMontage would execute the round-lot portion(s) of such orders through the main non-directed order process and thereafter execute any odd-lot remainder against the next market maker in rotation with an odd-lot exposure amount sufficient to fully execute the odd-lot. The resulting odd-lot execution would be done at the same price as the round-lot portion(s) of the mixed-lot order.

Upon further review, Nasdaq has determined to alter this approach to the processing of odd-lots and mixed-lot orders in SuperMontage. Instead, Nasdaq proposes to implement in SuperMontage a fully integrated process to execute and process orders in share amounts of less than one round-lot (100 shares). As such, Nasdaq will not provide a separate process for odd-lot orders and instead allow the entry of orders in any whole share amount from 1 to 999,999 shares. The outline of this ''actual shares'' approach follows.

I. Display of Quotations and Dissemination of Transaction Reports

Nasdaq will continue to display and disseminate quote and trade information solely in round-lot amounts. The Nasdaq inside market will consist of the best-priced bid display quote and the best-priced offer display quote that are at least one round-lot (100 shares) in size. Nasdaq will continue to disseminate transactions to the public tape, whether it is a round or mixed-lot

execution, in round-lot increments.[7] For quote display purposes, Nasdaq will aggregate all shares (orders and quotes) entered by a market participant, including UTP Exchanges, at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination. For example, a quoting market participant with three separate orders to buy of 50 shares, 225 shares and 590 shares at the same price level would have displayed next to its market identifier on the bid side of the market an aggregate quote size of 800 shares (50 + 225 + 590 = 865 which is then rounded down to 800 shares for display purposes). Likewise, a party entering a mixed-lot quote/order will have that mixed-lot amount automatically rounded down to nearest round-lot amount for display. Though rounded, any odd-lot portion that is not displayed as a result of this rounding process (in the previous example, 65 shares) will remain in the system, with the time-priority of their original entry. SuperMontage's aggregated share price information features will disseminate price and size information based solely on aggregated round-lot share amounts (including aggregated mixed-lots rounded down to round-lots) and will not include any price level where there is less than a round-lot share amount of trading interest.

A. Display of Mixed-Lot and Odd-lot Remainders

SuperMontage will not display odd-lots.[8] Aggregated or initial round-lot amounts that are subsequently reduced by executions to a mixed-lot amount will be rounded down for display purposes to the nearest round-lot amount at that same price level. If executions result in there being an insufficient (odd-lot remainder) amount of shares at a price level to display a round-lot share amount for a market participant using SuperMontage's new quote/order interface (''Quote/Order''), the system will instead display that market participant's next best priced round-lot share amount on that same

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[7] For the purpose of publicly reporting transactions to the tape, Nasdaq would round a mixed-lot execution down, and report it as the next lowest round-lot increment. Telephone conversation between Thomas P. Moran, Associate Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 17, 2002.

[8] Under the proposal, the maximum number of shares of an individual order, or an aggregated total of multiple orders, that potentially may not be displayed is 99 shares. Nasdaq believes that this approach is consistent with the Commission's Limit Order Display Rule that exempts customer limit orders of odd-lot size from the display requirement. *See* Exchange Act Rule 11Ac1–4(c)(3); 17 CFR 240.11Ac–4(c)(3).

side of the market where the market participant using quotes/orders has displayable trading interest of at least a single round-lot share amount. If there is no remaining displayable trading interest on a particular side of the market a new quote/order will be generated using the ''penalty process,'' as set forth in Section I.B. below.

If a market participant in SuperMontage continues to use current quote technology—''Legacy Quote''— instead of SuperMontage's new quote and order entry messages and features,[9] the system will likewise not display any odd-lot remainder of the Legacy Quote and will instead either: (1) refresh the Legacy Quote using the Auto Quote Refresh (''AQR'') function to a price and size selected by the entering party, or (2) generate a entirely new Legacy Quote using the penalty process, as set forth below.

B. Penalty Quote Refresh

If a market maker is using either a Quote/Order, or a Legacy Quote without AQR functionality, and has no attributable round-lot share amounts on a particular bid or ask side of a market to round to, SuperMontage will automatically generate, consistent with NASD Rule 4710(b)(5), a quote of a normal size unit of trading (*i.e.,* a round-lot).[10] When a market participant's

Legacy Quote is refreshed using the penalty process, any odd-lot remainder of the market participant's present in the system will be purged and will not be retained for potential execution.[11] However, the odd-lot remainder of a market maker using a Quote/Order will remain in the system, will not be purged, and will be retained for potential execution.

C. Automatic Quote Refresh

As stated previously, a market participant using a Legacy Quote, but not Quote/Order, may use Nasdaq's AQR functionality to have their displayed quote refreshed to a price and size (round-lot share amount) selected by the firm immediately after its displayed and reserve size at a price level is reduced to less than 100 shares. Any odd-lot share amount present at the

time a Legacy Quote is refreshed by AQR shall *not* be retained in the SuperMontage system for execution and the system will only recognize and potentially process the round-lot refreshed amount.

AQR was introduced in a SOES environment (and carried over into SuperSOES), where market participants can only enter one price level, and can have their quotes decremented to zero due to automatic executions. In SOES and SuperSOES, if a firm does not refresh its quote after being decremented to zero, the firm is subject to a mandatory withdrawal from market making in the security at issue, as it has failed to maintain a two-sided market (''SOESed-out-of-the-Box''). Thus, the purpose of AQR is to allow market participants to meet their two-sided quote obligations in an environment where market participant are subject to automatic execution and withdrawal and have only one means of meeting with two-sided market requirement (*i.e.,* via a two-sided quote).

In this filing, Nasdaq proposes that SuperMontage will only allow AQR to function with Legacy Quotes.[12] AQR will not function with new SuperMontage Quotes/Orders as AQR was tied to an environment where an market participant can only enter a single quote to manage their position. In addition, Nasdaq believes that AQR is redundant if a firm is using multiple quote/orders to manage their positions—that is, if a firm is using multiple quotes or orders to manage their position and meet their two-sided market obligation, AQR is duplicative.

Lastly, Nasdaq believes it is important to note that the need for AQR in a SuperMontage environment is less, in part, because market makers can no longer be SOESed-out-of-the-Box pursuant to the penalty quote process (as described in Section B of this filing).

D. Retention of Odd-Lot Remainders for Potential Execution

SuperMontage will always retain for potential execution all odd-lot remainders of Quotes/Orders unless canceled by the entering party. For Legacy Quotes, odd-lot remainders will be retained by the system only to the extent that Legacy Quote has not been refreshed by either the AQR function or the penalty process. Legacy Quotes using Nasdaq's AQR functionality shall have their displayed quote refreshed to

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[9] An integral part of Nasdaq's implementation strategy for SuperMontage is to provide users with the ability to initially select their level of interaction with the system and the timing of internal firm programming changes necessary to take advantage of some or all of SuperMontage's new features and functionality. Through a programming approach known as ''backward compatibility,'' SuperMontage will allow firms to continue to use the quote and order templates they use today in the SuperSoes environment to format messages to interact with the SuperMontage (i.e., Legacy Quote). Likewise, firms that continue to use current SelectNet formats, will be able to use SuperMontage's Directed Order Process to communicate with other market participants.

Firms would need to make at least some programming changes to participate in the new SuperMontage environment using existing SuperSOES formats, interfaces and functions. However, backward compatibility allows a firm to internally prioritize which SuperMontage features and functions it would like to take advantage of, and program for those changes first. In one limited circumstance, however, the decision to program to use a SuperMontage feature providing greater flexibility than that available in today's environment, can result in losing a complimentary capability. This occurs when a firm programs to use SuperMontage's new Quote/Order interface and thus is able to place multiple quotes at multiple price levels in the system. When this occurs, the firm may no longer use Nasdaq's AQR feature which is associated exclusively with Legacy Quotes. *See* Section I.C. of this filing.

[10] The currently approved SuperMontage rule provides that if a market maker's quote or order is decremented to zero and the market maker does not update its principal quote via AQR, transmit a revised attributable quote/order to Nasdaq, or have

another attributable quote or order in the system, Nasdaq will place the market maker's quote (both sides) in a closed state for three minutes. At the end of that time, if the market maker did not voluntarily update or withdraw its quote from the market, Nasdaq will refresh the market maker's quote/order to its normal unit of trading at the lowest bid and highest offer currently being displayed in that security and reopen the market maker's quote.

Nasdaq recently filed with the Commission a proposed rule change to modify this process. Under the proposal, if all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid or offer side of the market, and the market maker does not update its principal quote via AQR, transmit a revised attributable quote/order to Nasdaq, or have another attributable quote or order in the system, the system, after 30 seconds, would refresh only the market maker's exhausted bid or offer quote to a normal unit of trading priced $0.01 inferior to the lesser of either: a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, SuperMontage will instead re-open the exhausted market maker's bid/offer quote at a price $0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this penalty quote refresh process would result in the creation of a bid/offer of less than $0.01, the system will refresh that bid/offer to a price of $0.01. *See* Securities Exchange Act Release No. 45671 (March 28, 2002), 67 FR 16784 (April 8, 2002) (Notice for File No. SR–NASD–2002–01).

Changes were made to this footnote pursuant to a telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 20, 2002.

[11] Note, however, between the time a market maker's Legacy Quote is decremented to less than a round-lot share amount and the time the market maker's Legacy Quote is refreshed pursuant to the penalty process or the transmission of a revised attributable quote prior to the system refreshing the quote via the penalty process, any odd-lot remainders will be retained by the system and shall be accessible for execution. In essence, odd-lot remainders of a Legacy Quote are purged from the system contemporaneous with the actually refreshing of a Legacy Quote. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 20, 2002.

[12] The SuperMontage, as originally approved, contemplated the use of the AQR function with a market participant's use of multiple attributable quotes. *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

the price and round-lot share amount selected by the firm immediately after its display and reserve at a price level is reduced to less than 100 shares. Any odd-lot share amount present at the time a Legacy Quote is refreshed using the AQR function shall *not* be retained in the SuperMontage system for execution. In addition, when a Legacy Quote without AQR functionality is refreshed using the penalty process, any odd-lot remainder shall not be retained by the system after the market maker has had its quote refreshed by the penalty process.[13] ECNs that have only odd-lot share amounts remaining at a price level will remain in the montage with no displayed quote on the side(s) of the market where they have the odd-lot amount. Though un-displayed, such odd-lots remainders will reside in the system, retain their price and time priority, and will be available for execution.

E. Reserve Refresh

SuperMontage also allows market participants to use reserve size and select a round-lot refresh amount that the market participant wishes its quote to be refreshed to once its displayed size is reduced to less than a round-lot. Thus, once a quote or an order is decremented to a size less than 100 shares, the system will refresh the quote from reserve size by an amount designated by the market participant. If there was an odd-lot amount available prior to the quote being refreshed, the odd-lot remainder of quotes and orders being refreshed from reserve would be retained by the system and combined with the refresh size. For example, a market maker (''MMA'') is displaying a 1000 share bid quote. MMA has 5000 shares in reserve and a 500 share refresh size. SuperMontage executes 925 shares against MMA's. Upon execution, since MMA's displayable interest is less than 100 shares, the system will refresh MMA's' quote by the refresh amount— 500 shares, but will also retain the 75 share odd-lot remainder in the system. The resulting 575 share total will remain in the system and available for execution but will be rounded down to 500 shares for display purposes.

II. Entry of Orders

Under the new approach to odd-lot orders, market participants will be able to enter orders into SuperMontage in any whole-share amount from 1 to 999,999 shares. Though eligible for entry and execution along with all other quotes and orders, orders originally entered in odd-lot amounts may not use

[13] *See supra* note 11.

SuperMontage's Reserve Size feature.[14] Like round-lot orders, odd-lot and mixed-lot orders will be allowed to be entered as ''market'' orders or priced ''limit'' orders, and may have a designated time-in force of ''Day,'' ''Immediate or Cancel,'' or ''Good-till-canceled.''[15] They can also be replaced, increased or decreased under the same terms and conditions as round-lot orders. Odd-lot orders may also be preferenced (via the Non-Directed Order Process set forth in NASD Rule 4710(b)(1)(B)(iv)) to other market participants in the same manner as round and mixed-lots.

Finally, to the extent that any order residing in SuperMontage becomes subject to an issuer corporate action related to a stock split or dividend that would require adjustment of the size of that order, Nasdaq will adjust the order's size to an appropriate individual share amount.[16] Currently, the rules governing these adjustments call for, in certain cases, the rounding of share amounts to the nearest round-lot. If this proposal is approved, such rounding, when required, will be done to the single share. Nasdaq believes that this will result in more accurate representation of buying and selling interest.

III. Execution Process

Odd-lots and mixed-lots shall be processed through SuperMontage's Non-Directed Order process. All market and marketable limit orders for odd-lots and mixed-lots will execute against trading interest on the other side of the market (against which it is marketable) on a share-by-share basis (in actual share amounts). Odd-lots and mixed-lots will receive a time stamp upon entry into SuperMontage, which they will retain while in the system. Odd-lots and mixed-lots will be executed pursuant to the execution algorithm selected (price/time (default), price/time with fee consideration, and price/size/time) by

[14] Quotes and orders originally entered into the system as mixed-lots may use the SuperMontage reserve size feature. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on May 17, 2002.

[15] Nasdaq has filed a rule proposed rule change with the Commission to allow orders in SuperMontage to be designated as ''Day.'' The Commissions expects that Nasdaq will amend the proposed rule change shortly to include the ''Good-till-cancelled'' designation. *See* File No. SR–NASD–2001–98.

[16] Nasdaq filed a proposed rule change with the Commission that became effective pursuant to section 19(b)(3)(A) of the Act, which sets forth this adjustment process that currently contains rule language rounding share amounts to round-lots. *See* Securities Exchange Act Release No. 4577 (April 18, 2002), 67 FR 20566 (April 25, 2002).

the entering market participant. Priced mixed-lot orders (limit orders) that are entered by a quoting market participant and that are or become non-marketable, will be displayed in SuperMontage on a rounded basis. That is, the system will round down the size of mixed-lot to the nearest round-lot amount.[17] An odd-lot, mixed-lot, or round-lot that subsequently is reduced to an odd-lot or mixed-lot size will retain the time-stamp of original entry for purposes of determining priority in the Non-Directed Order processing queue.

As described above, odd-lots will be retained by the system, but will not be displayed. Odd-lots and mixed-lots will interact with other quotes and orders against which they are marketable in the same manner as round-lots. As also described above, SuperMontage will *not* execute at an inferior price level until all better-priced share amounts that are in the system, both round-lots and undisplayed odd-lots, are executed.

Nasdaq believes that the full integration of odd-lot share amounts into SuperMontage is a great step forward in ensuring that the small orders of public customers are treated fairly, consistently, and on the same terms as the larger orders of professional market participants. In addition, by placing such orders on an equal execution footing with round-lot trading interest, Nasdaq believes that odd-lot share amounts can be a significant source of liquidity in the Nasdaq market.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[18] in general and with section 15A(b)(6) of the Act,[19] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions and 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.

[17] ''Immediate or Cancel'' (''IOC'') Orders are not eligible for display in SuperMontage. Orders entered by order-entry firms are designated as IOC. Quoting market participants (*i.e.,* market makers, ECNs, and UTP Exchanges) may designate orders as IOC.

[18] 15 U.S.C. 78o–3.

[19] 15 U.S.C. 78o–3(b)(6).

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

Nasdaq neither solicited nor received written comments.

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 NASD 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.[20]

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–42 and should be submitted by June 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45970; File No. SR–NYSE–2001–33]

Self-Regulatory Organizations; The New York Stock Exchange; Notice of Filing of Proposed Rule Change To Amend the Certification Requirements of the Listed Company Manual

May 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 24, 2001, the New York Stock Exchange ("NYSE") filed with the Securities and Exchange Commission ("Commission") and on April 16, 2002, and May 7, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to amend Section 501 of the NYSE's Listed Company Manual ("Manual") to specify that a stock may be listed on the NYSE notwithstanding that is dematerialized or in book-entry-only form if the stock is included in the Direct Registration System ("DRS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section 5 of the NYSE's Manual deals with stock certificates requirements including when certificates must be distributed and what form stock certificates must take. Section 501.01 of the Manual currently requires a listed company to send stock certificates to record holders unless the stock distribution relates to a stock dividend reinvestment plan, stock dividend reinvestment purchase plan or a similar stock purchase plan, or the company's stock is included in DRS.

Over the years the NYSE has recognized changes in custom as the use of certificates has become less common with respect to certain securities such as corporate bonds and structured products (*e.g.*, equity-linked notes). In the 1980s for example, the NYSE amended Section 501.02 to specify that bonds may be listed on a book-entry basis using a global certificate held by a depository.[3]

Even with respect to common stocks, the trend has been to emphasize immobilization of certificates and book-entry delivery and settlement of trades whenever possible. In 1993, uniform rules were adopted among the U.S. securities markets to specify that exchange members must settle all trades in "depository-eligible securities" on a book-entry basis (that is, without having to physically deliver certificates).[4] In 1995, the NYSE adopted a rule specifying that a security must be "depository eligible" prior to listing it on the exchange.[5] Depository eligibility does not preclude certification of a security but it does not require a certificate either. Accordingly, securities may be completely dematerialized, represented by a single global certificate held at the depository, or represented by traditional stock certificates. In each case, the important characteristic is that the securities involved can be held in or on behalf of a depository so that trades

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[20] Nasdaq has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its publication in the **Federal Register**. *See* Amendment No. 2, *supra* note 4.

[21] 17 CFR 200.30–3(a)(12).

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

[2] The Commission has modified the text of the summaries prepared by the NYSE.

[3] Securities Exchange Act Release No. 25872 (June 30, 1988), 53 FR 25,560 [File No. SR–NYSE–88–07] (order approving rule permitting the use of a single global certificate for bonds).

[4] NYSE Rule 226. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 [File Nos. SR–AMEX–93–07; SR–BSE–93–08; SR–MSE–93–03; SR–NASD–93–11; SR–NYSE–93–13; SR–PSE–93–04; and SR–PHLX–93–09] (order approving SRO rules requiring book-entry settlement of securities transactions).

[5] NYSE Rule 227. Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 [File No. SR–NYSE–95–19] (order approving adoption of Rule 227 requiring issuers' shares to be depository eligible).