

203. Letter from Eli Lopin, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Lopin Letter").

204. Letter from Ben Williams, Registered Representative, NASD, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("B. Williams Letter").

205. Letter from Jason Towne, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated January 9, 2001 ("Towne Letter").

206. Letter from Kiet T. Vo, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Vo Letter").

207. Letter from Isaak Volodarsky, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Volodarsky Letter").

208. Letter from Dario Cosic, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Cosic Letter").

209. Letter from Jason Herrick, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Herrick Letter").

210. Letter from Simrin Dhillon, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Dhillon Letter").

211. Letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley, to Jonathan G. Katz, Secretary, SEC, dated December 4, 2001 ("Morgan Stanley Letter").

212. Letter from John Schmidt, Registered Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("J. Schmidt Letter").

213. Letter from Robert V. Morant, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Morant Letter").

214. Letter from Hirokazu Iwasa, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Iwasa Letter").

215. Letter from Eric P. Knight, Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("E. Knight Letter").

216. Letter from Junghyun Won, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Won Letter").

217. Letter from Joshua A. D'Aleo, Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 7, 2001 ("D'Aleo Letter").

218. Letter from Kerry Senna, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Senna Letter").

219. Letter from Kon-Young Lee, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("K. Lee Letter").

220. Letter from Alexander Wang, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("A. Wang Letter").

221. Letter from Charles William Hansford, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Hansford Letter").

222. Letter from Cary S. Grill, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Grill Letter").

223. Letter from Jonathan Schuldenfrei, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Schuldenfrei Letter").

224. Letter from Jeffrey Schulberg, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Schulberg Letter").

225. Letter from Cornel Catrina, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Catrina Letter").

226. Letter from Eliav Bock, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Bock Letter").

227. Letter from Marina J. Kaneti, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Kaneti Letter").

228. Letter from Kristopher Goldhair, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Goldhair Letter").

229. Letter from Joshua Weintraub, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Weintraub Letter").

230. Letter from David Caputo, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Caputo Letter").

231. Letter from Tolga Erman, Registered Principal, to Jonathan G. Katz, Secretary, SEC, undated, received February 22, 2001 ("Erman Letter").

232. Letter from Brenda C. Blackard, First Vice President, Manager Nasdaq Trading, Davenport & Company LLC, to Jonathan G. Katz, Secretary, SEC, dated March 7, 2001 ("Blackard Letter").

233. Letter from Piers Fennell, Individual Investor, to Jonathan G. Katz, Secretary, SEC, dated April 2, 2001 ("Fennell Letter").

[FR Doc. 02-14139 Filed 6-7-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46013; File No. SR-NASD-2002-55]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change Relating to the Minimum Life of Directed Orders in Nasdaq's SuperMontage System and the Minimum Life of SelectNet Orders

May 31, 2002.

On April 18, 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"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) Establish a minimum life of five seconds for Directed Orders in Nasdaq's future Order Display and Collector

Facility ("NNMS" or "SuperMontage"), and (2) reduce from ten seconds to five seconds the minimum time period before an order entered into Nasdaq's SelectNet system may be cancelled by the entering party. The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.<sup>3</sup>

The Commission received one comment regarding the proposal.<sup>4</sup> According to this one commenter, the reduction from ten seconds to five seconds of the minimum life of SelectNet orders was both justified and beneficial, and would reduce opportunity costs as well as increase market efficiency. The commenter also believes that, "[b]ased on the current performance of the SelectNet system, the risk of rejected executions with a 5 second delay is almost zero. [Further, c]urrent SelectNet performance levels justify further cutting the delay down to as little as one second."

The Commission finds that the proposed rule change is consistent with the requirements of section 15A of the Act<sup>5</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15(A)(b)(6),<sup>6</sup> which provides that the rules of the association be designed to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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. Nasdaq represents that the average time for a SelectNet order to be delivered to a recipient is 0.5 seconds, and that this standard will be maintained with Directed Orders in SuperMontage.<sup>7</sup> The Commission finds that the proposal to establish a minimum life of five seconds for Directed Orders in SuperMontage is consistent with section 15A(b)(6) of the Act<sup>8</sup> because it should provide market participants with a reasonable opportunity to respond to incoming orders before they are cancelled, while

<sup>3</sup> See Securities Exchange Act Release No. 45813 (April 24, 2002), 67 FR 21792.

<sup>4</sup> See e-mail comment from Joshua Levine to rule-comments@sec.gov, Commission, dated May 15, 2002.

<sup>5</sup> 15 U.S.C. 78o-3.

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

<sup>7</sup> Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on May 31, 2002.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

limiting the exposure of order senders to potential inferior execution in a volatile market. In addition, the Commission finds that establishing a five-second minimum life period for both Directed Orders in SuperMontage and for SelectNet orders should help to provide clarity and uniformity of minimum order life parameters across both systems during the phase-in period.<sup>9</sup> Nasdaq expects to implement both rule changes on July 1, 2002.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NASD-2002-55) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-14431 Filed 6-7-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46025; File No. SR-NASD-2002-70]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Replacement Hearing Officers' Authority to Participate in Hearing Panel Decisions

June 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 31, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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

NASD Regulation proposes to amend NASD Procedural Rules 9231 and 9233 to clarify a replacement Hearing Officer's authority when he or she is appointed after a hearing has begun or been concluded. The text of the proposed rule is below. Proposed new language is in italics.

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel *or Replacement Hearing Officer*

(a) No Change.

(b) Hearing Panel.

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in *paragraph (e) and in Rule 9234 (a), (c), (d), or (e)*. The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) through (2) No Change.

(c) through (d) No Change.

(e) *Appointment of Replacement Hearing Officer.*

*In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:*

(1) *Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the*

*decision on behalf of the Hearing Panel, in accordance with Rule 9268; or*

(2) *Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.*

\* \* \* \* \*

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

(a) Recusal, Withdrawal of Hearing Officer.

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. *In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).*

(b) through (c) No Change.

\* \* \* \* \*

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

The proposed amendments clarify a replacement Hearing Officer's authority when he or she is appointed after a hearing has begun or been concluded. For various reasons, Hearing Officers are sometimes unable to finish hearings and participate in the issuance of decisions. NASD Code of Procedure Rule 9233 provides that the Chief Hearing Officer shall appoint a replacement Hearing

<sup>9</sup> Nasdaq intends to introduce SuperMontage through a phased roll-out process where limited numbers of securities will transition to trading in the new SuperMontage environment under new rules, while the remainder will continue to trade in Nasdaq's current environment. Nasdaq represents that, during this transition, both SuperMontage and SelectNet will continue to operate, and a single uniform minimum order cancellation time parameter will be needed to govern both systems.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> NASD Regulation asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b-4(f)(6).