

because it will allow for the continued operation of the pilot without interruption.<sup>14</sup> According to CBOE, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE maintains that given the widespread use of the 100 Spoke RAES Wheel in equity options trading stations, requiring the Exchange to discontinue the use of the 100 Spoke RAES Wheel as of June 29, 2002 would cause disruption to those trading stations and thus, be disruptive to investors and the public interest. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission. The Commission also waives the five-business-day pre-filing requirement. 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.

#### 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. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-CBOE-2002-34 and should be submitted by July 29, 2002.

<sup>14</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46140; File No. SR-NASD-2002-81]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness by the National Association of Securities Dealers, Inc. Relating to the Time In Force and Cancellation Parameters for Directed Orders and the Summary Scan Functionality of Nasdaq's SuperMontage System

June 28, 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 June 13, 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. 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 add NASD Rule 4701(hh), and amend paragraphs (b)(2) of NASD Rule 4706 ("Order Entry Parameters"), and (d) of NASD Rule 4707 ("Entry and Display of Quotes/Orders"), which govern the time in force parameters for Directed Orders, and the summary scan functionality of Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage"), respectively. Nasdaq proposes to implement this proposed rule change within 30 days after successful completion of SuperMontage user acceptance testing. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

<sup>15</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.

#### 4701. Definitions

(a) through (gg) No Change.

(hh) *The term "Day" shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4:00 p.m. Eastern Time), after which it shall be returned to the entering party.*

#### 4706. Order Entry Parameters

(a) 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) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of [1] 3 to 99 minutes[.], *or may be designated as a "Day" order.*

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) through (f) No Change.

#### 4707. Entry and Display of Quotes/Orders

(a) through (c) No Change.

(d) Summary Scan—The "Summary Scan" functionality, which is a query only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) [below] *including* the number of price levels authorized for aggregation and display pursuant to Rule 4701 (ee).

(e) 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

As part of its ongoing preparation for the launch of SuperMontage, Nasdaq is engaging in a continuing review of the system's functionality, and rules thereof, with a view towards constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq proposes to modify certain SuperMontage parameters, functionality, and rules as they relate to time in force of Directed Orders and SuperMontage's summary scan feature.

#### a. Directed Orders

Nasdaq proposes to provide additional flexibility for SuperMontage participants in determining the life of Directed Orders sent to the system. Directed Orders are orders that are sent to a specific market maker or electronic communications network. In SuperMontage, a firm that receives a Directed Order has the ability to choose whether it will consider those Directed Orders as a liability order or a non-liability order.

Currently, a Directed Order in SuperMontage may have a time in force from 1 to 99 minutes. Nasdaq proposes to amend the time in force provision to a 3 to 99 minute standard, and also provide the capability for SuperMontage users to designate Directed Orders as a "Day" order. As defined in proposed NASD Rule 4701 (hh), a Day order designation would indicate that the order is to remain in force until the Nasdaq market closes (currently 4:00 p.m. Eastern Time) on the day the order was submitted. Under the proposal, unexecuted Day orders would be cancelled and returned by Nasdaq to the sender at market close.

Like other Directed Orders, a Directed Order with a Day designation may be entered starting at 8:00 a.m. Eastern

Time. According to Nasdaq, since quotes are not open or considered firm at this time, a Directed Order with a Day designation entered prior to the 9:30 a.m. market open will not obligate the receiving party to execute that order. However, such orders may be accepted, countered, or otherwise may commence negotiations leading to a transaction between the parties. Directed Orders with a Day designation may not be entered or executed during Nasdaq's after-hours session (4:00 p.m. to 6:30 p.m. Eastern Time),<sup>3</sup> nor will they participate in the pre-open unlocking and uncrossing process recently proposed by Nasdaq in File No. SR-NASD-2002-56.<sup>4</sup>

Nasdaq believes that the proposed amendments to the time in force parameters for Directed Orders will provide an additional degree of flexibility to market participants to manage their Directed Order flow. Nasdaq believes that the ability to set a specific time period that an order will remain in effect, including the ability to have an order remain in effect for the entire day, are long-standing industry functionalities used by many market participants that accept and retain orders. In addition, Nasdaq believes that these new SuperMontage standards are consistent with current time in force practices in Nasdaq's SelectNet service, and can be expected to reduce technological burdens on firms converting to SuperMontage and thereby assist and simplify the transition to the system.

#### b. Summary Scan

Nasdaq also proposes to improve the SuperMontage summary scan feature. Currently, the summary scan feature allows SuperMontage participants to query the system and see the aggregate attributed and unattributed size of quotes/orders for all price levels in a particular security, below the best five price levels in SuperMontage.<sup>5</sup> In response to input from market participants, Nasdaq proposes to modify the summary scan feature to combine all aggregate quote/order information, including the aggregate of the five best

<sup>3</sup> Nasdaq anticipates submitting a proposed rule change to extend the operation of the After Hours Pilot program to SuperMontage. See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (Approval of After Hours Pilot program for the Nasdaq SelectNet Service).

<sup>4</sup> See Securities Exchange Act Release No. 45965 (May 20, 2002), 67 FR 36659 (May 24, 2002).

<sup>5</sup> Nasdaq recently expanded the aggregated price levels available through the Nasdaq Order Display Facility from three to five. See Securities Exchange Act Release No. 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

price levels displayed in SuperMontage. Nasdaq's proposal seeks to alleviate concerns that the separation of aggregated price level information from the remainder of aggregate interest could lead to potential confusion among users of the summary scan feature as to what constitutes the best price in Nasdaq at a particular time. According to Nasdaq, the proposed changes to the summary scan combines information, already available separately through SuperMontage, into a single integrated information source.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general, and Section 15A(b)(6) of the Act,<sup>7</sup> 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 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.

### 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 has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder<sup>9</sup> because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, provided

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

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

that Nasdaq has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>10</sup> 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.

#### 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. 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 NASD.

All submissions should refer to File No. SR-NASD-2002-81 and should be submitted by July 29, 2002.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-16985 Filed 7-5-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46153; File No. SR-NASD-2002-68]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Modify Execution Fees for Nasdaq's Intermarket Trading System and Computer Assisted Execution System, and to Extend the Transaction Credit Pilot Program for InterMarket Trades

July 1, 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 June 13, 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. On June 21, 2002, Nasdaq amended the proposal.<sup>3</sup> Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder<sup>5</sup> as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. 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 (i) to modify the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System ("ITS") and Nasdaq's Computer Assisted Execution System ("CAES"); and (ii) to modify and extend the transaction credit pilot program for InterMarket trades ("Program"). Nasdaq will implement the rule change on July 1, 2002. The text of the proposed rule change is below. Proposed new

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

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

<sup>3</sup> See June 21, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical, non-substantive changes to the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

language is in italics; proposed deletions are in brackets.

7010. System Services

(a)-(b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit[.]

For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and ending with the calendar quarter starting on [April] *October 1, 2002. Effective as of July 1, 2002, for purposes of calculating the credit for trades executed through ITS or CAES, trade reports will be credited to the member that sells in response to a buy order or that buys in response to a sell order.*

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per *share* transaction charge plus equipment-related charges.

(1) Service Charges.

\$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges.

(A) As of [January 1, 1998, \$0.50 per execution] *July 1, 2002, \$0.003 per share executed* shall be paid by an order entry firm or CAES market maker that enters

<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

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