

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-2002-09 and should be submitted by September 9, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46345; File No. SR-NASD-2002-105]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Increase the Term of Office for Members of the Nasdaq Listing and Hearing Review Council From Two to Three Years, and to Increase the Number of Nasdaq Listing and Hearing Review Council Classes

August 13, 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 August 2, 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 the

proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(3) thereunder<sup>4</sup> as being concerned solely with the administration of 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 from interested persons.

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

Nasdaq proposes to increase the term of office for members of the Nasdaq Listing and Hearing Review Council ("Listing Council") from two to three years, and to increase the number of Listing Council classes from two to three. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deleted text is in brackets.

BY-LAWS OF THE NASDAQ STOCK MARKET, INC.

\* \* \* \* \*

#### ARTICLE V

##### NASDAQ LISTING AND HEARING REVIEW COUNCIL

\* \* \* \* \*

#### Term of Office

Sec. 5.4 (a) *Beginning in January 2003*, [E]xcept as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of *three* [two] years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason. *Prior to January 2003, the term of office for each Nasdaq Listing and Hearing Review Council member shall be two years.*

(b) The Nasdaq Listing and Hearing Review Council shall be divided into *three* [two] classes. The term of office of those of the first class shall expire in January *2004* [1999], [and] the term of office of those of the second class shall expire *in January 2005*, [one year thereafter] *and the term of office of those of the third class shall expire in January 2006.* Beginning in January *2003* [1999], members shall be appointed for a term of *three* [two] years to replace those whose terms expire.

(c) [Beginning in 1999,] [n]o member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two

consecutive terms following the expiration of such member's initial term.

\* \* \* \* \*

#### 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

Nasdaq proposes to increase the term of office for members of the Listing Council, and to increase the number of Listing Council classes. The Listing Council, which consists of between eight and 18 members, considers and makes recommendations to the Nasdaq Board on policy and rule changes relating to issuer listings. In addition, the Listing Council, to the extent of its delegated authority, functions as the appellate forum for staff adjudicated determinations related to compliance with applicable listing requirements.

Currently, members of the Listing Council hold office for a term of two years and may serve no more than two consecutive terms. Nasdaq proposes to extend members' terms to three years in order to provide greater continuity to the Listing Council. Specifically, the increase in the length of members' terms will allow the Listing Council to be divided into three classes rather than the current two classes. By dividing the Listing Council into three classes, the number of members that must be selected and trained each time a new class is appointed will be significantly reduced.

Nasdaq proposes to implement the proposed rule change by extending the second term of most current Listing Council members from two to three years. Currently, the Listing Council consists of 18 members. The first class is composed of eight members. Five of these members are currently serving their second consecutive term, which is scheduled to expire in January 2003 ("Group 1"). The remaining three members of the first class are currently

<sup>6</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)(3).

-serving their first term and their second term is scheduled to expire in January 2005 ("Group 2"). The second class is also composed of eight members. All of the members of the second class are serving their second consecutive term, which is scheduled to expire in January 2004 ("Group 3"). The remaining two members of the Listing Council were appointed by the Board of Directors of Nasdaq earlier this year, one in May 2002 and the other in July 2002. Pursuant to Section 5.4(c) of the By-Laws of The Nasdaq Stock Market, these members' initial term will expire in January 2003 and they will then be eligible to serve two consecutive terms.

By extending the second term of most current members to three years, Nasdaq will be able to efficiently divide the Listing Council into three classes. Under this plan, the new first class will be composed of Group 1 and the second term of the members in this class will expire in January 2004. The new second class will be composed of Group 3 and the second term of the members in this class will expire in January 2005. Lastly, the new third class will be composed of Group 2 and the second term of the members in this class will expire in January 2006. The two remaining Listing Council members that were appointed earlier this year will be part of the new third class and they will be eligible to serve two three-year terms. Thus, these members' first term will expire in January 2006 and their second term will expire in January 2009.<sup>5</sup>

## 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 with 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, and, in general, to protect investors and the public interest. Specifically, Nasdaq believes the proposed rule change will provide greater continuity to the Listing Council, thereby allowing it to more efficiently address listing and policy matters that often involve investor protection issues.

### *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, as amended.

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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder,<sup>9</sup> because it is concerned solely with the administration of the Association. 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 proposal 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 Association. All submissions should refer to file number SR-NASD-2002-105 and should be submitted by September 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46343; File No. SR-NASD-2002-91]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Voluntary Participation by National Securities Exchanges in the Nasdaq Order Collection Facility, Commonly Known as "SuperMontage"**

August 13, 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 July 1, 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The proposed rule change, which Nasdaq filed pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> would clarify the terms and conditions upon which Nasdaq will grant access to SuperMontage to national securities exchanges that trade Nasdaq-listed securities on an unlisted trading privileges basis ("UTP Exchanges"). Nasdaq will make these rule changes effective upon the launch of SuperMontage.

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 is filing a proposed rule change to NASD Rule 4710 regarding voluntary participation by national securities exchanges in the Nasdaq

<sup>5</sup> Nasdaq considers these two members to be part of the new third class as their service on the Listing Council will end at the expiration of their first term in January 2006 unless they are reappointed for a second term.

<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)(3).

<sup>10</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).