

**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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions should refer to File No. SR-DTC-2002-13 and should be submitted by December 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46917; File No. SR-NASD-2002-151]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Modify SuperMontage Transaction Execution Fees and Credits**

November 26, 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 October 23, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the rule effective upon Commission receipt of this filing. 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 the Substance of the Proposed Rule Change**

Nasdaq proposes to modify order execution charges and liquidity provider credits applicable to Non-Directed, Preferred, and Directed Orders in Nasdaq's SuperMontage system. Nasdaq will implement the rule change on November 1, 2002. Because the transition from the current SuperSOES, SOES, and SelectNet environment to SuperMontage is occurring over the course of several weeks, with stocks moving from one system to the other in stages, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have not transitioned, while charging the SuperMontage prices established through SR-NASD-2002-44,<sup>5</sup> SR-NASD-2002-91,<sup>6</sup> SR-NASD-2002-135,<sup>7</sup> and SR-NASD-2002-151 for stocks that have transitioned.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].

**Rule 7010. System Services**

\* \* \* \* \*

- (a)-(h) No change.
- (i) Nasdaq National Market Execution System (SuperMontage).  
The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

**Order Entry**

Non-Directed Orders (excluding Preferred Orders) .....	No charge
Preferred Orders:	
Preferred Orders that access a Quote/Order of the member that entered the Preferred Order).	No charge
Other Preferred Orders .....	\$0.02 per order entry
Directed Orders .....	\$0.10 per order entry

**Order Execution**

Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order .....	[\$0.002] <i>\$0.003</i> per share executed (but no more than \$75 per trade for trades in securities executed at \$1.00 or less per share)
Credit to member providing liquidity .....	[\$0.001] <i>\$0.002</i> per share executed (but no more than [\$37.50] <i>\$50</i> per trade for trades in securities executed at \$1.00 or less per share)
Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	\$0.001 per share executed (but no more than [\$37.50] <i>\$25</i> per trade for trades in securities executed at \$1.00 or less per share)
Directed Order .....	[\$0.0025] <i>\$0.003</i> per share executed
Non-Directed or Preferred Order entered by a member that accesses a Quote/Order of such member.	No charge

<sup>5</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)(ii).

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

<sup>5</sup> Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR-NASD-

2002-44). SR-NASD-2002-44 established a fee scheduled for members' use of SuperMontage.

<sup>6</sup> Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (SR-NASD-2002-91). SR-NASD-2002-91 provides that the fees for the use of SuperMontage by a national securities exchange trading Nasdaq securities on an unlisted trading privileges basis (a

"UTP Exchange") may be established by means of an agreement between Nasdaq and the UTP Exchange.

<sup>7</sup> Securities Exchange Act Release No. 46648 (October 11, 2002), 67 FR 64439 (October 18, 2002) (SR-NASD-2002-135). SR-NASD-2002-135 established maximum execution fees and credits for transactions in low-priced securities.

**Order Cancellation**

Non-Directed Orders (excluding Preferred Orders) .....	\$0.01 per order cancelled
Preferred Orders .....	\$0.01 per order cancelled
Directed Orders .....	\$0.10 per order cancelled

**Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants**

Initial entry of Quote/Order .....	No charge
Change of Quote/Order due to order execution through SuperMontage.	No charge
Cancel/replace of Quote/Order to increase size .....	No charge
Cancel/replace of Quote/Order to change price .....	\$0.01
Cancel/replace of Quote/Order to decrease size manually .....	\$0.01
Cancellation of Quote/Order .....	\$0.01
Cancellation of Quote/Order due to order purge or timeout .....	\$0.0075

(j)–(s) 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

Nasdaq is proposing to increase the order execution charges and the liquidity provider credits applicable to the execution of Non-Directed, Preferred, and Directed Orders in SuperMontage. Earlier this year, in anticipation of the launch of SuperMontage, Nasdaq established a price schedule that featured: (i) A \$0.002 per share charge for the execution (in full or in part) of a Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through SuperMontage; (ii) a \$0.001 per share charge for the execution (in full or in part) of a Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee; (iii) a \$0.001 per share credit to a member that provides the liquidity for an execution and does not charge an access fee; and (iv) a \$0.0025 per share charge for the execution of Directed Orders.

Nasdaq believes that a liquidity provider credit, which was introduced

in Nasdaq's SuperSoes system<sup>8</sup> and was recently approved by the Commission for Nasdaq's InterMarket,<sup>9</sup> serves to encourage market makers to display quotes and limit orders that set the inside market through Nasdaq, thereby enhancing the opportunities for favorable executions of market orders routed to Nasdaq. Nasdaq also believes that the credit serves to enhance competition between electronic communications networks ("ECNs"), which are permitted to charge fees for accessing their quotations, and market makers, which generally are prohibited from doing so.<sup>10</sup> Accordingly, the credit is not available to members that charge fees for accessing their quotes through SuperMontage, because such market participants are already compensated for providing liquidity if their quote is executed against and an access fee is charged. Moreover, Nasdaq charges a lower fee for the execution of a Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee, in order to offset the access fee that the liquidity taker must pay.

According to Nasdaq, ECNs are now generally charging \$0.003 per share to liquidity takers while offering \$0.002 per share to liquidity providers. As such, Nasdaq believes that it must increase both the order execution fee and the credit to liquidity providers in order to ensure that competition between Nasdaq and ECNs is based on market quality rather than price.

<sup>8</sup> Securities Exchange Act Release No. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR-NASD-2001-67).

<sup>9</sup> Securities Exchange Act Release No. 46594 (October 3, 2002), 67 FR 63485 (October 11, 2002) (SR-NASD-2002-109).

<sup>10</sup> Compare letter from Richard R. Lindsay, Director, Division of Market Regulation ("Division"), to Charles R. Hood, Senior Vice President and General Counsel, Instinet Corporation (January 17, 1997) (acknowledging ECN access fee of up to \$0.015 per share) with letter from Robert L.D. Colby, Deputy Director, Division, to M. Joseph Messina, Vice President, M.H. Meyerson & Co., Inc. (May 5, 1998) (interpreting SEC Rule 11Ac1-1 to prohibit market makers from charging fees for access to their public quotes).

Without a change in SuperMontage fees, Nasdaq believes that market participants will have a financial incentive to route limit orders to ECNs rather than posting them in SuperMontage. Accordingly, Nasdaq is increasing the execution fee for Non-Directed and Preferred Orders that access the Quote/Order of a market participant that does not charge an access fee, as well as the execution fee for Directed Orders, to \$0.003 per share, while increasing the credit paid to liquidity providers that do not charge an access fee to \$0.002 per share. The execution fee for a Non-Directed or Preferred Order that accesses the Quote/Order of an access-fee-charging market participant remains \$0.001. Finally, Nasdaq is adjusting the fee and credit caps established by SR-NASD-2002-135 for transactions in low-priced securities to ensure that the ratio between these caps remains equal to the ratio between underlying per share prices. Thus, the cap on the liquidity provider credit is being increased to \$50, while the cap on the fee to access the Quote/Order of a market participant that charges an access fee is being lowered to \$25.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>11</sup> in general, and with section 15A(b)(5) of the Act,<sup>12</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and other persons using any facility or system which the NASD operates or controls.

### 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.

<sup>11</sup> 15 U.S.C. 78o-3.

<sup>12</sup> 15 U.S.C. 78o-3(b)(5).

*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 foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and rule 19b-4(f)(2) thereunder, because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization.<sup>14</sup> At any time within 60 days of the filing of such 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 number SR-NASD-2002-151 and should be submitted by December 26, 2002.

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

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

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**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34-46913; File No. SR-NSCC-2002-09)

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Acceptance of Trade Data**

November 26, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> notice is hereby given that on October 24, 2002, National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposed rule change.

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

The proposed rule change would amend NSCC's rules to provide that NSCC may accept trade data from derivatives clearing organizations.

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

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on 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. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

The purpose of the proposed rule filing is to allow NSCC to accept trade data from derivatives clearing organizations ("DCOs") that are registered or deemed registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act. OneChicago LLC has

developed a physically-settled, narrow-based security index futures that will deliver of the underlying securities at expiration. To facilitate the settlement of these futures at expiration, NSCC will need to receive trade date relating to exercise obligations.

NSCC's rules currently provide that NSCC may accept trade data from self regulatory organizations ("SROs"), as defined in the Act.<sup>3</sup> In its connection with OneChicago and these physically-settled, narrow-based security index futures, the Chicago Mercantile Exchange ("CME") will have trade data relating to expiration obligations necessary for settlement. While the CME is a DCO, it is not an SRO. In order to be able to accept trade data from the CME, NSCC is proposing to amend Section 5 of its Rule 7 (Comparison and Trade Recording Operation) to provided that NSCC may accept trade data from DCOs that are registered or deemed to be registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

NSCC believes that the proposed rule filing is consistent with the requirements of the Act and the rules and regulations there under because it promotes the prompt and accurate clearance and settlement of securities transactions.

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

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there under particularly with the requirements of Section 17A(b)(3)(F).<sup>4</sup> Section 17A(b)(3)(F) requires that the rules of a

<sup>3</sup> Section 3(a)(26) of the Act defines an SRO as any national securities exchange, registered securities association, registered clearing agency, or (solely for purposes of sections 19(b), 19(c), an 23(b) of the Act) the Municipal Securities Rulemaking Board established by Section 15B of the Act.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.