references in NASD Rule 2340 prevents the need to change the rule if the broker-dealers described in paragraphs (a)(2)(iv), (v), and (vi) are moved to other provisions in Rule 15c3–1 under the Act.

In addition, NASD represents that to ensure that Rule 2340(c)(2) more closely reflects the language in Rule 15c3–1 and the NASD staff's long-standing interpretation, the proposed rule change amends the exclusion from the definition of a general securities member for ''a member that does not carry customer accounts and does not hold customer funds *and* securities'' to state ''a member that does not carry customer accounts and does not hold customer funds *or* securities'' (emphasis added).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD represents that the proposed rule change would amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3–1 under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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 immediately effective pursuant to section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1) thereunder,[8] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

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 NASD. All submissions should refer to File No. SR–NASD–2003–36 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7344 Filed 3–26–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47554; File No. SR–NASD–2003–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Anti-Internalization Qualifier Values

March 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003, The National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to 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. On March 14, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

Nasdaq proposes to allow the Quotes/Orders of Nasdaq Quoting Market Participants and NNMS Order Entry Firms in its SuperMontage system to interact with Quotes/Orders entered by that same participant on the other side of the market based strictly on the execution algorithm selected. Nasdaq also proposes to codify the function that precludes the Quotes/Orders of Nasdaq Quoting Market Participant or NNMS Order Entry Firms from interacting with Quotes/Orders entered by the same participant on the other side of the market. The text of the proposed rule change follows.

Proposed new language is *italicized;* proposed deletions are in [brackets].

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders.

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

(A) Obligations for each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 14, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq clarified that the Anti-Internalization Qualifier (''AIQ'') ''I'' Value for Nasdaq Quoting Market Participants would be available on May 12, 2003. For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 14, 2003, the date Nasdaq filed Amendment No. 1.

NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(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.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(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 or NNMS Order Entry Firm 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 or NNMS Order Entry Firms 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. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, 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. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. 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 (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Effective February 10, 2003, until [April 28, 2003 (or such earlier date as determined by Nasdaq with appropriate notice to the Securities and Exchange Commission and market participants)] *March 17, 2003,* this processing shall also apply to Non-Directed Orders of NNMS Order Entry Firms. Thereafter, this exception shall not apply to Non-Directed Orders Entered by NNMS Order Entry Firms. *Nasdaq Quoting Market Participants may, and NNMS Order Entry Firms must, avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:*

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

The I value described above shall be available for the use of NNMS Order Entry Firms on March 17, 2003, and available for use by Nasdaq Quoting Market Participants on May 12, 2003.

(b) through (c) No Change.

(C) through (D) No Change.

(2) through (8) No Change.

(c) through (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

On January 31, 2003, the Commission approved File No. SR–NASD–2002–173 on a 90-pilot basis,[4] to allow NNMS Order Entry Firms to enter non-marketable limit orders into Nasdaq's SuperMontage system using the SIZE MMID.[5] Under new processing set to commence on March 17, 2003, the quotes/orders of NNMS Order Entry Firms on opposite sides of the market will interact with each other only if such interaction would result based on the execution algorithm selected (price/time, price/time with fee consideration, or price/size). This filing seeks to provide this same option to Nasdaq Quoting Market Participants, and codify current SuperMontage functionality related to the use of the Anti-Internalization Qualifier order flag.

Currently, SuperMontage market participants that do not wish to execute against themselves may voluntarily designate individual quotes/orders so that they do not automatically interact

[4] *See* Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003).

[5] The SIZE MMID is the anonymous MMID that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MMID. Instead, these are displayed next to the SIZE MMID.

in SuperMontage with any quotes/orders entered by that same firm on the other side of the market by attaching an AIQ flag to the quote/order. The AIQ flag is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. SuperMontage will not cross an AIQ-flagged order with a ''Y'' value that resides in the system's book, or is entered for immediate execution, with another quote/order from that same market participant. Instead, the system executes against eligible trading interest of other market participants at that same price level. If there is no such interest, SuperMontage allows no execution, does not go the next price level, and rejects back to the entering party the most recently entered of its two interacting quote/orders.

In order to accommodate potential interaction of bid and offer quote/orders of NNMS Order Entry Firms based solely on the execution algorithm selected as contemplated in File No. SR–NASD–2002–173, Nasdaq modified the AIQ flag. In addition to the current AIQ default value of ''N'' (allow internalization), and the ability to enter, on an order-by-order basis, an AIQ ''Y'' value (prohibit internalization), a new AIQ value of ''I'' (allow internalization based solely on execution algorithm) was created.[6] Quotes/Orders designated with an AIQ value of I skip SuperMontage's automatic internalization function and match off against trading interest entered by that same firm on the other side of the market only if such buy and sell interest would naturally meet based on the selected execution algorithm. In short, the AIQ I value neither forces nor prohibits internalization, and on March 17, 2003, will become the default value for NNMS Order Entry Firms.[7]

The following example illustrate how the AIQ I value works:

• MMA enters 1000 share market order to buy with AIQ Y value (prohibit internalization), price/time.

Inside Offer

MMB—$20 × 500
ECN1—$20 × 400
MMA—$20 × 400

Resulting executions: 500 against MMB; 400 against ECN1; 100 rejected back to MMA because it would cross/internalize.

• MMA enters 1000 share market order to buy with AIQ I value (internalize based only on execution algorithm selected), price/time.

Inside Offer

MMB—$20 × 500
ECN1—$20 × 400
MMA—$20 × 400

Resulting executions: 500 against MMB; 400 against ECN1; 100 executed against MMA because the interaction of MMA's buy order and its offer quote occurs naturally based on the price/time execution algorithm selected.

This filing seeks to provide this same ''natural'' internalization option to Nasdaq Quoting Market Participants. Like the other AIQ values available to Nasdaq Quoting Market Participants, use of the AIQ I value would be purely voluntary and could be used on an order-by-order basis. Nasdaq believes that the AIQ I value provides additional flexibility for Nasdaq Quoting Market Participants to manage the interaction of quotes/orders submitted by them to better serve their customers. In addition, the natural quote/order interaction provided by the AIQ I value may also assist market participants in satisfying certain ERISA regulatory exemptions and thus permit them to interact with orders from otherwise restricted accounts since such executions would occur naturally in the SuperMontage system. Finally, Nasdaq notes that use of AIQ I value simply results in Nasdaq Quoting Market Participants having the option to have their orders execute pursuant to well-recognized and widely-used execution algorithms such as price/time and price/size that have already been approved by the Commission for the SuperMontage system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[8] in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as removing impediments to and perfect the mechanism of a free and open market, 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, 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

Because the foregoing proposed rule: (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 or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, as amended, 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[11] The Commission notes that the proposed AIQ I flag codifies the order interaction contemplated by Nasdaq in File No. SR-NASD–2003–173 for NNMS Order Entry Firms, as well as provides Nasdaq Quoting Market Participants with the same option. Further, the AIQ Y flag codifies the existing function whereby Nasdaq Quoting Market Participants and, now Order Entry Firms, may avoid internalization entirely. The AIQ Y flag exists to assist certain market participants in complying with certain

[6] *See* Nasdaq Head Trader Alert #2003–026 (February 24, 2003).

[7] NNMS Order Entry Firms will continue to be able to use the AIQ Y value on an order-by-order basis, but, in conformity with SR–NASD–2002–173, will not be permitted to use the AIQ N value.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f). As a result of the waiver, the effective and operative date of the filing is March 14, 2003, the date Nasdaq filed Amendment No. 1.

ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal.

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 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–2003–39 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–7345 Filed 3–26–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47547; File No. SR–NYSE–2002–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. To Amend the Exchange's Specialist Combination Review Policy

March 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 the Exchange. On January 27, 2003 the NYSE amended the proposed rule change.[3] 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

The Exchange proposes to amend its Specialist Combination Review Policy (''Policy''), which was recently codified as NYSE Rule 123E. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 123E—Specialist Combination Review Policy

(a) No specialist organization shall complete a ''proposed combination'' (defined below) with one or more other specialist organizations unless the combination has been approved pursuant to this policy.

(b) *Except as provided below,* [I]*i*n any case where a proposed combination involves or would result in a specialist organization accounting for more than five percent of any of the ''concentration measures'' (defined below), the Quality of Markets Committee (the ''Committee'') shall review the proposed combination with the following considerations in mind:

(1) Specialist performance and market quality in the stocks subject to the proposed combination[;]*, with a recommendation from the Market Performance Committee on these matters pursuant to paragraph (e) below.*

(2) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(3) Commitment to the Exchange market, focusing on whether the constituent specialist organizations have worked to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(4) The effect of the proposed combination on overall concentration of specialist organizations.

The Committee shall approve or disapprove the proposed combination based on its assessment of these considerations. In the case where a combination involves an organization that is not a specialist organization, consideration (b)(3) shall entail an assessment of whether the organization will work to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets.

In any case where a specialist unit currently exceeds five percent of any concentration measure, and then proposes a combination that would not result in increasing its concentration measure by more than two percentage points, or not result in the combined unit moving into a higher tier classification, the Quality of Markets Committee shall not review the proposed combination. The Market Performance Committee shall review the proposed combination from the standpoint of assessing specialist performance and market quality with respect to the securities subject to the proposed combination. The Market Performance Committee will approve, or disapprove in writing, such combination, and may impose such conditions as it deems appropriate with respect to specialist performance and market quality.

(c) In any case where a proposed combination involves or would result in a specialist organization accounting for more than ten percent *(a ''Tier 2 combination'')* of any of the concentration measures, the Committee shall give primary weight to consideration (b)(4). The Committee shall disapprove the proposed combination unless the constituent specialist organizations:

(1)(a) For a proposed combination which involves or would result in a specialist unit accounting for more than ten percent, but less than or equal to 15%, of a concentration measure, prove, by a preponderance of the evidence; or

(b) For a proposed combination that involves or would result in a specialist unit accounting for more than 15% of a concentration measure (a ''[15%] *Tier 3* combination'') present clear and convincing evidence that, if approved, the proposed combination:

(i) Would not create or foster concentration in the specialist business detrimental to the Exchange and its markets;

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[12] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 24, 2003 (''Amendment No. 1''). In Amendment No. 1 the Exchange provided a new Exhibit A that completely replaces and supersedes the proposed rule language in the original filing.