

non-customers by the 6:30 p.m. (EST) deadline must use an electronic time stamp to record the time the member received the exercise decision from the non-customer options holder. This requirement is in response to Amex's concern that firms that manually submit CEAs or Advice Cancels could have an opportunity to improperly extend the 5:30 p.m. (EST) deadline to decide whether to exercise an expiring option. The Commission believes that the requirement that an electronic time stamp be employed in such circumstances adequately addresses these concerns.

Amex also proposed alternate time frames for exercise decisions and CEA and Advice Cancel submissions when trading times are modified. Specifically, if the Exchange announces a modified close of trading by 5:30 p.m. (EST) on the business day immediately prior to the last business day before expiration, then options holders will have 1 hour and 28 minutes after the close of trading to make a decision whether to exercise an expiring option and members will have 2 hours and 28 minutes to submit CEAs and Advice Cancels of customers and non-customers to the Exchange.²⁹ In addition, Amex proposed to allow it to extend cut-off times for exercise decisions and CEA and Advice Cancel submissions due to unusual circumstances³⁰ and on a case-by-case basis. Finally, Amex proposed to allow it to reduce cut-off times for exercise decisions and CEA and Advice Cancel submissions due to unusual circumstances³¹ so long as the Exchange provides at least one business day prior notice, by 12 noon on such day. If the Exchange reduces cut-off times, however, they cannot set such cut-off times before the close of trading.

As noted above, several commenters raised concerns regarding the Exchange's ability to modify the cut-off

²⁹ As required above, members must use an electronic time stamp for non-customer exercise decisions. If a member does not employ an electronic time stamp procedure, then it must submit the CEAs and Advice Cancels of non-customer options holders within 1 hour and 28 minutes following the close of trading.

³⁰ For purposes of extending cut-off times, Amex defined "unusual circumstances" as including increased market volatility, significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal systems malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

³¹ For purposes of reducing cut-off times, Amex defined "unusual circumstances" as including a significant news announcement concerning the underlying security of an options contract that is scheduled to be released just after the close of trading on the business day immediately prior to expiration.

times. The Commission believes that Amex addressed commenters concerns by requiring that advance notice be provided in the event that Amex modifies the cut-off times due to either modified trading hours or unusual circumstances. The Commission believes that the advance notice requirements should enable members to notify customers and non-customers of the modified cut-off times.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended by Amendment Nos. 1, 2, 3 and 4, 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,³² that the proposed rule change, as amended, (SR-Amex-2001-92) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-12942 Filed 5-22-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47883; File No. SR-NASD-2003-72]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Reduce the Non-Directed Order Maximum Response Time for Order-Delivery ECNs in Nasdaq's SuperMontage System

May 16, 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 April 14, 2003, 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. On May 15, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Nasdaq proposes to reduce, from 30 seconds to 7 seconds, the maximum time allowed for Nasdaq's National Market Execution System ("NNMS") Order-Delivery Electronic Communications Networks ("Order-Delivery ECNs") to respond to non-directed orders sent to them by Nasdaq's SuperMontage system ("SuperMontage"). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4710. Participant Obligations in NNMS

- (a) No Change.
- (b) Non-Directed Orders.
- (1) No Change.
- (A) through (B) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferred Order in an amount equal to the system-delivered order or execution.

- (i) No Change.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within [30] 7 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2003 ("Amendment No. 1"). Amendment No. 1: (1) Inserts a section I to Exhibit 1 of the filing that Nasdaq inadvertently excluded; and (2) clarifies in the purpose section of the proposal that Nasdaq believes that commenters concerns regarding prior SuperMontage system issues related to the delivery of orders to market participants are no longer valid.

bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) through (iv) 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

Currently, NASD rules regarding Nasdaq's SuperMontage system allow NNMS Order-Delivery ECNs a maximum time period of 30 seconds to respond to non-directed orders sent to them by the system.⁴ If an Order-Delivery ECN fails to respond within those 30 seconds, the delivered order is canceled by SuperMontage and forwarded to the next NNMS Quoting Market Participant in queue for execution. The ECN's quote at the price level on the side of the market to which the order was delivered is then reduced to zero.⁵ In this filing, Nasdaq proposes to reduce that maximum response time from 30 seconds to 7 seconds. Other than the reduction in the response-time maximum, Nasdaq represents that non-directed orders that time-out in ECNs will continue to be processed (*e.g.*, canceled by SuperMontage and forwarded to the next party available for execution) in the same manner.

Nasdaq believes that the current 30-second response time is excessive, and can inappropriately delay the processing of orders.⁶ According to

Nasdaq, this is particularly the case given Nasdaq's recent analysis of ECN responsiveness, which indicates that the average response-time across all ECNs participating in SuperMontage is less than one quarter of a single second. Nasdaq believes that the 7-second maximum response time proposed here draws an appropriate balance between giving ECNs ample time to execute non-directed orders sent to them, and the need of other market participants to more swiftly retrieve and execute orders originally dispatched to non-responsive ECNs. Nasdaq will continue to monitor ECN responsiveness to delivered orders in SuperMontage and propose additional modification to response time parameters if warranted.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act⁷ in general, and with section 15A(b)(6) of the Act⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

messages to market participants. Nasdaq believes that, based upon SuperMontage's performance to date, such concerns are no longer valid.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(6).

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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-2003-72 should be submitted by June 13, 2003.

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

Jill M. Peterson,
Assistant Secretary.

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DEPARTMENT OF STATE

[Public Notice 4373]

Culturally Significant Objects Imported for Exhibition Determinations: "Hendrick Goltzius, Dutch Master (1558-1617): Drawings, Prints and Paintings"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

⁹ 17 CFR 200.30-3(a)(12).

⁴ See NASD rule 4710(b)(1)(C)(ii).

⁵ The ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

⁶ Nasdaq notes that the 30-second time period contained in the current rule resulted, in part, because of concerns raised by commenters about past Nasdaq system issues related to the delivery of