

general, to protect investors and the public interest.

The Commission believes that eliminating the requirement that a CHX specialist fill resting limit orders at the block price following a block trade trade-through in the primary market will permit specialists to handle block orders more quickly and efficiently. Based on representations by the Exchange, the Commission believes that this obligation was one the CHX assumed voluntarily in order to make its market more attractive to sources of order flow. The Commission believes that the business decision to potentially forego order flow by no longer requiring specialist to provide such protection to block orders is a judgment the Act allows the CHX to make.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-CHX-2003-08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-16715 Filed 7-1-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48097; File No. SR-ISE-2003-10]

### Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the International Securities Exchange, Inc., Relating to Its Obvious Error Rule

June 26, 2003.

#### I. Introduction

On February 28, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to amend ISE Rule 720 relating to obvious error transactions. On May 1, 2003, the ISE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The

proposed rule change, as amended, was published for comment in the **Federal Register** on May 15, 2003.<sup>4</sup> The Commission did not receive any comments on the proposed rule change. On June 10, 2003, the ISE filed Amendment No. 2 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended, and notices and grants accelerated approval to Amendment No. 2.

#### II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5)<sup>7</sup> of the Act, which requires that the rules of an exchange be 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>8</sup>

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In addition, in the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes

Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the ISE replaced the proposed rule text in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 47817 (May 8, 2003), 68 FR 26336 (May 15, 2003) ("Notice").

<sup>5</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated June 9, 2003 ("Amendment No. 2"). In Amendment No. 2, the ISE amended proposed Supplementary Material .07 to ISE Rule 720 to clarify the definition of "erroneous buy transaction."

<sup>6</sup> For a description of the proposed rule change, see Notice, *supra*, n.4.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

that the Exchange's proposed revisions to ISE Rule 720 establish specific and objective criteria for determining when a trade is an "obvious error." The Commission also believes that the proposed amendments establish specific and objective procedures governing the adjustment or nullification of such trade.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 does not make any substantive changes to the proposed rule text. It simply clarifies that an "erroneous buy transaction" is one in which the price paid by the person purchasing the option is erroneously high. Therefore, the Commission believes that granting accelerated approval of Amendment No. 2 is appropriate and consistent with section 6(b)(5)<sup>9</sup> and section 19(b)<sup>10</sup> of the Act.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Amendment No. 2, including whether Amendment No. 2 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 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 ISE. All submissions should refer to File No. SR-ISE-2003-10 and should be submitted by July 23, 2003.

#### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-ISE-2002-10), as amended, be, and hereby is, approved,

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> 15 U.S.C. 78s(b)(1).

<sup>11</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy

and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-16711 Filed 7-1-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48088; File No. SR-NASD-2003-85]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendments No. 1 and 2 Thereto Relating to a Post-Trade Anonymity Feature in SuperMontage

June 25, 2003.

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 May 22, 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 Nasdaq has prepared. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On June 23, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is

publishing this notice, as amended, 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 seeking to add a post-trade anonymity feature to its SuperMontage trading system.

The text of the proposed rule change is below. Proposed new text is *italicized* and proposed deleted text is [bracketed].

\* \* \* \* \*

#### 4712. *Obligation To Honor System Trades*

(a) If an NNMS Participant, or clearing member acting on his behalf, is reported by NNMS to clearing [at the close of any trading day], or shown by the activity reports generated by NNMS as constituting a side of a System trade, such NNMS Participant, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.

(b) *Nasdaq shall have no liability if an NNMS Participant, or a clearing member acting on his behalf, fails to satisfy the obligations in paragraph (a).*

#### 4719. *Anonymity*

(a) *Transactions executed in NNMS in which at least one member submits a Non-Attributable Quote/Order will be processed anonymously. The transaction reports will indicate the details of the transactions, but will not reveal contra party identities.*

(b)(1) *The processing described in paragraph (a) shall not apply to transactions executed in NNMS when the member whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.*

(2) *Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.*

(c)(1) *The Association may reveal a member's identity when the National Securities Clearing Corporation ("NSCC") ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades.*

(2) *The Association may reveal a member's identity for regulatory*

identities of the members that execute anonymous trades through SuperMontage for six years in order to satisfy members' record keeping obligations under Securities Exchange Act Rules 17a-3(a)(1) and 17a-4(a).

*purposes or to comply with an order of an arbitrator or court.*

(3) *The Association may reveal a member's identity on risk management reports provided to the member's contra parties each day after 4 p.m., which disclose trading activity on an aggregate dollar value basis.*

\* \* \* \* \*

#### 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 add a post-trade anonymity feature to SuperMontage in response to demand from members. Today, systems that provide automatic executions of orders for Nasdaq stocks are commonplace and often it is the additional features offered by a system that determines whether market participants send orders to that system or a competing system. One such feature valued by market participants today is the ability to trade anonymously. When a member seeks to trade anonymously, it wants to prevent its contra party from knowing its identity.

Anonymity is important to market participants because sometimes the identity of a party can reveal important "market intelligence" and complicate a member's ability to execute its customer orders. For example, if members see a pattern in which a particular member is actively buying a security, and it is commonly known that this member handles the orders of several very large institutional customers, such as pension funds or mutual funds, the other members can adjust their trading strategy for that security in anticipation of the strong demand that should develop as the member attempts to fill the order of one or more of its large institutional customers. In such a scenario, the natural result is that the price of the security increases and it becomes more expensive to fill the order. This result commonly is referred

<sup>12</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> See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Nasdaq added rule language in paragraph (c) of NASD Rule 4719 that states that the Nasdaq staff can limit a member's ability to submit anonymous orders upon request of the member's firm. This provision was subsequently withdrawn in Amendment No. 2.

<sup>4</sup> See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division of Market Regulation, dated June 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the Nasdaq withdrew the provision to restrict a member's ability to submit anonymous orders upon request of the member's firm in paragraph (c) of NASD Rule 4719. Nasdaq also codified the proposal, through proposed paragraph (c) of NASD Rule 4719, to indicate that a member's identity may be revealed: (1) When the National Securities Clearing Corporation ("NSCC") ceases to act for a member or the member's clearing firm; (2) for regulatory purposes, or upon the order of a court or arbitrator; and (3) after 4 p.m. on trade date on an aggregate basis. Nasdaq also represented that it will retain the