

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49586; File No. SR-NSX-2004-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Stock Exchange Amending Its Fee Schedule To Cap Members Monthly Transaction Fees and Reduce the Designated Dealer's Principal Activity Fees

April 21, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on March 31, 2004, the National Stock ExchangeSM (the "Exchange" or "NSX"SM)³ 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. The Commission is publishing this notice to solicit comment on the proposed rule change 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 fee schedule to place a cap of \$200,000 per member on monthly transaction fees and to reduce the charge for Designated Dealers' principal activity from \$0.0025 to \$0.001 per share for non-Nasdaq securities.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

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Rule 11.10. National Securities Trading System Fees

A. Trading Fees

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(g) Proprietary ([p]Principal) Transactions.

(1)(A) All Designated Dealers in securities other than Nasdaq securities, except those acting as Preferring Dealers or Contributing Dealers, will be charged \$0.001[0.0025] per share (\$0.1[0.25]/100 shares) for principal transactions.

* * * * *

(i) [Reserved.] *Transaction Fee Cap. The monthly transaction fees charged to*

each member shall be equal to the lesser of (1) the amounts assessed pursuant to Paragraphs (A)(a) through (A)(h) of this Rule 11.10 or (2) \$200,000.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange is proposing two changes to its fee schedule. First, the Exchange proposes to introduce a cap on the total monthly transaction fees assessed to each member. There is currently no limit to the overall amount of transaction fees that may be charged. However, under the new fee provision, the monthly transaction fee will now be capped at \$200,000 per member. Second, the Exchange proposes to reduce the charge for a Designated Dealer trading in non-Nasdaq securities when not acting as a Preferring Dealer or Contributing Dealer.⁴ The current fee is \$0.0025 per share for principal transactions. The Exchange proposes to reduce this fee to \$0.001 per share, which is the equivalent of the Exchange's current charge for Intermarket Trading System or "ITS" transactions.

The Exchange believes that the implementation of these changes will allow for a reduction in the overall level of fees paid by members while ensuring that each member pays an equitable share of the costs associated with operating the Exchange.

⁴ A Preferring Dealer trades against public agency market or marketable limit orders which the Dealer presents as agent in accordance with the Exchange's price-time and agency/principal priority rules. See Exchange Rule 11.9(u). A Contributing Dealer is a member that must maintain certain minimum net capital, be registered with the Exchange with respect to one or more securities, and provide regular bids and offers for round lots of securities in which it is registered. See Exchange Rule 11.9(a)(6).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁵ in general, and with section 6(b)(4) of the Act,⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ in that it is designed 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. The Exchange believes that the proposed changes will create incentives for members to use the Exchange trading system, thereby increasing competition, which, in turn, will enhance the National Market System.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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 in connection with the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁸ Rule 19b-4(f)(2)⁹ thereunder, because it changes a due, fee or other charge imposed by the Exchange. 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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange recently changed its name and was formerly known as The Cincinnati Stock Exchange or "CSE." See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR-CSE-2003-12).

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment for (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2004-03 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NSX-2004-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSX-2004-03 and should be submitted on or before May 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49597; File No. SR-NASD-2004-051]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating to the Use of Summary Orders for NNMS Order-Delivery ECNs Using the SIZE MPID in SuperMontage

April 21, 2004.

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 23, 2004, 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 April 9, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change,³ and on April 19, 2004, Nasdaq filed Amendment No. 2 to the proposed rule change.⁴ 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 the Substance of the Proposed Rule Change

Nasdaq proposes to provide those NNMS Order-Delivery ECNs participating in SuperMontage with an order type (Summary Orders) that will generate a warning message if an un-attributed order they enter into the system would lock or cross the best bid or best offer displayed in Nasdaq. Pursuant to section 19(b)(3)(A) of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 8, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the originally filed proposal in its entirety. This Amendment No. 1 also replaced and superceded an earlier Amendment filed by Nasdaq, also marked Amendment No. 1, dated March 26, 2004. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and A. Michael Pierson, Attorney, Division, Commission on March 26, 2004.

⁴ See letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated April 16, 2004 ("Amendment No. 2"). Amendment No. 2 replaced Amendment No. 1 in its entirety.

Act⁵ and Rule 19b-4(f)(6) thereunder,⁶ Nasdaq has designated the proposed rule change as non-controversial and one effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) will not become operative for at least thirty days after the date of this filing.⁷ Nasdaq intends to implement the proposed rule change on or about July 17, 2004,⁸ and will inform market participants of the exact implementation date via a Head Trader Alert on <http://www.nasdaqtrader.com>.

Below is the text of the proposed rule change, as amended. Proposed new language is in *italic*; proposed deletions are in [brackets].

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)-(nn) No Change.

(oo) [Reserved] *The term "Summary" shall mean, for priced limit orders so designated, that if an order is marketable upon receipt by NNMS, it shall be rejected and returned to the entering party. Summary Orders may only be entered by NNMS Order Delivery ECNs. Summary Orders may only be designated as Non-Attributable Orders.*

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4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) No Change.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel," "Day," "Good-till-Cancelled," "Auto-Ex," "Fill or Return," "Pegged," "Discretionary," "Sweep," "Total Day," "Total Good till Cancelled," [or] "Total Immediate or Cancel," or "Summary."

(1) through (12) No Change.

(13) *An order may be designated as "Summary," in which case the order*

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ On March 9, 2004, Nasdaq provided Commission staff with a description and text of the proposed rule change.

⁸ Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and A. Michael Pierson, Attorney, Division, Commission on April 21, 2004.

¹⁰ 17 CFR 200.30-3(a)(12).