

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 ISE. All submissions should refer to SR-ISE-2003-11 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47488; File No. SR-NASD-2002-107]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment Nos. 1, 2, 3, and 4 Thereto by the National Association of Securities Dealers, Inc. To Retroactively Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperSoes Transactions in Low-Priced Securities

March 12, 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 6, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 August 19, 2002, Nasdaq submitted Amendment

No. 1 to the proposed rule change.³ On August 30, 2002, Nasdaq submitted Amendment No. 2 to the proposed rule change.⁴ On October 9, 2002, Nasdaq submitted Amendment No. 3 to the proposed rule change.⁵ On February 21, 2003, Nasdaq submitted Amendment No. 4 to the proposed rule change.⁶ 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

Retroactive to July 1, 2002, Nasdaq proposes to: (1) Establish a \$75 maximum execution fee cap for a single SuperSoes transaction; and (2) Establish a \$37.50 maximum cap on the rebate amount provided by Nasdaq to market participants that provide liquidity to its market.⁷ The text of the proposed rule change, as amended, appears below. New text is in *italics*; deletions are in brackets.

* * * * *

7010. System Services

(a)-(h) No change.

(i) Transaction Execution Services.

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES).

The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—\$0.10 per order entry (entering party only)

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 16, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 30, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made a technical correction to the proposed rule text.

⁵ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 9, 2002 ("Amendment No. 3"). In Amendment No. 3, Nasdaq made a technical correction to the proposed rule text.

⁶ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 20, 2003 ("Amendment No. 4"). In Amendment No. 4, Nasdaq made technical corrections to the proposed rule text.

⁷ Nasdaq also filed a separate proposal, pursuant to Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii), to establish these same fee and rebate limits on a going-forward basis. See Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR-NASD-2002-106).

Per Share Charge—\$0.001 per share executed for all fully or partially executed orders (entering party only)
Cancellation Fee—\$0.25 per order cancelled (canceling party only)

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only).

Effective July 1, 2002, [F] for trades in securities that are executed at a price of \$1.00 or less per share, the maximum charge per trade under this section shall not exceed \$75.00.

(3) No change.

(4) Liquidity provider rebate.

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003:

(A) NASD members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of \$0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) NASD members will receive a rebate of \$0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.

(C) *Effective July 1, 2002, [F] for trades in securities that are executed at a price of \$1.00 or less per share, the maximum rebate available per trade under section (4) of this rule shall not exceed \$37.50.*

(j)-(s) No change.

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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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, 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.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.