

Order Entry

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| Non-Directed Orders (excluding Preferred Orders) | No charge. |
| Preferred Orders: | |
| Preferred Orders that access a Quote/Order of the member that entered the Preferred Order. | No charge. |
| Other Preferred Orders | \$0.02 per order entry. |
| Directed Orders | \$0.10 per order entry. |

Order Execution

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| Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS: | |
| Charge to member entering order | \$0.003 per share executed (but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share). |
| Credit to member providing liquidity | \$0.002 per share executed (but no more than \$80 per trade for trades in securities executed at \$1.00 or less per share). |
| Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS. | \$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share). |
| Directed Order | \$0.003 per share executed. |
| Non-Directed or Preferred Order entered by a [member] <i>Nasdaq Quoting Market Participant</i> that accesses [a] <i>its own</i> Quote/Order [of such member]. | No charge. |
| Non-Directed Order entered by an NNMS Order Entry Firm that accesses its own Quote/Order. | \$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share). |

Order Cancellation

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| Non-Directed and Preferred Orders | No charge. |
| Directed Orders | \$0.10 per order cancelled. |
| (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 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 a proposed rule change to allow, on a 90-day pilot basis commencing February 10, 2003, OE Firms to enter non-marketable limit orders into SuperMontage using the SIZE Market Participant Identifier ("SIZE").⁶ Since the inception of this

pilot program, Nasdaq has applied its pre-existing SuperMontage fee schedule to market activity associated with orders entered into SIZE by OE Firms. As a result of Nasdaq's recent decision to eliminate all of the fees that had formerly applied to the cancellation and modification of orders entered into SIZE,⁷ OE Firms now have the opportunity to expose these orders to the market without charge.

In addition, under the SuperMontage fee schedule, OE Firms that enter orders into SIZE are eligible to receive the \$0.002 per share liquidity provider credit that market makers (and electronic communications networks ("ECNs")) that do not charge access fees receive when they provide liquidity to support order executions. Thus, when an order entered into SIZE by an OE Firm matches a non-directed order and an execution occurs, the market participant that entered the non-directed order will pay \$0.003 per share executed⁸ and the OE Firm will receive a credit of \$0.002 per share.⁹

As described in the filing to implement the pilot program, OE Firms currently have their orders processed in

a manner similar to that of Quoting Market Participants, in that SuperMontage first attempts to match an OE Firm's non-directed orders with orders in SIZE from the same OE Firm. As is true for Quoting Market Participants, moreover, Nasdaq has not assessed a charge (or provided a liquidity provider credit) when an OE Firm's non-directed order executes against the OE Firm's own order in SIZE. Upon the implementation of an upcoming modification to SuperMontage, however, non-directed orders entered by an OE Firm will execute solely based on the algorithm selected by the OE Firm (price/time, price/time with fee consideration, or price/size).¹⁰ Accordingly, although it is possible that an OE Firm's non-directed orders will be matched against its orders in SIZE, the system will no longer give an automatic preference to the OE Firm's orders in SIZE.

In light of this System modification, Nasdaq is proposing that an OE Firm entering a non-directed order that accesses a limit order that the OE Firm itself has posted in SIZE will pay \$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share). The \$0.001 per share fee is equivalent to the OE Firm paying the net of the \$0.003 order execution fee that it would pay to access the Quote/Order of a market

⁶ *Id.* SIZE is the anonymous market participant identified ("MPID") 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 MPID. Instead, the SIZE MPID is displayed when the aggregate trading interest at a particular price level of such Non-Attributable Quotes and Orders falls within the number of levels (currently five)

authorized for aggregation and display on either side of the market.

⁷ See Securities Exchange Act Release No. 47300 (January 31, 2003); 68 FR 6234 (February 6, 2003) (SR-NASD-2003-10). The entry of such orders has been free since the inception of the SuperMontage.

⁸ Subject to a \$120 per trade cap for trades in securities executed at \$1.00 or less per share.

⁹ Subject to an \$80 per trade cap for trades in securities executed at \$1.00 or less per share.

¹⁰ Nasdaq expects to implement this system change on March 17, 2003.