

references in NASD Rule 2340 prevents the need to change the rule if the broker-dealers described in paragraphs (a)(2)(iv), (v), and (vi) are moved to other provisions in Rule 15c3-1 under the Act.

In addition, NASD represents that to ensure that Rule 2340(c)(2) more closely reflects the language in Rule 15c3-1 and the NASD staff's long-standing interpretation, the proposed rule change amends the exclusion from the definition of a general securities member for "a member that does not carry customer accounts and does not hold customer funds and securities" to state "a member that does not carry customer accounts and does not hold customer funds or securities" (emphasis added).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁶ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD represents that the proposed rule change would amend NASD Rule 2340 to eliminate outdated and unnecessary references to Rule 15c3-1 under the Act.

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

NASD 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, as amended.

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

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(i) of the Act,⁷ and Rule 19b-4(f)(1) thereunder,⁸ in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, the Commission

may summarily abrogate the 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 proposal 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 NASD. All submissions should refer to File No. SR-NASD-2003-36 and should be submitted by April 17, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47554; File No. SR-NASD-2003-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Anti-Internalization Qualifier Values

March 21, 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 March 12, 2003, The National Association of Securities Dealers, Inc. ("NASD" or

"Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 14, 2003, Nasdaq filed Amendment No. 1 to the proposal.³ 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 proposes to allow the Quotes/Orders of Nasdaq Quoting Market Participants and NNMS Order Entry Firms in its SuperMontage system to interact with Quotes/Orders entered by that same participant on the other side of the market based strictly on the execution algorithm selected. Nasdaq also proposes to codify the function that precludes the Quotes/Orders of Nasdaq Quoting Market Participant or NNMS Order Entry Firms from interacting with Quotes/Orders entered by the same participant on the other side of the market. The text of the proposed rule change follows.

Proposed new language is *italicized*; proposed deletions are in [brackets].

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders.

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations for each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 14, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified that the Anti-Internalization Qualifier ("AIQ") "I" Value for Nasdaq Quoting Market Participants would be available on May 12, 2003. For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 14, 2003, the date Nasdaq filed Amendment No. 1.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.