

choose in the future to lend the proceeds of its MIC offerings to FSA, which, as an insurance company, is excluded from the definition of investment company under section 3(c)(3) of the Act and to any other insurance company subsidiaries now or hereafter controlled by FSAH that derive their non-investment company status under section 3(c)(3) (such insurance companies, including but not limited to FSA, "FSAH's Insurance Company Subsidiaries").

4. Rule 3a-5(a)(1) requires that any debt securities of a finance subsidiary issued to or held by the public be unconditionally guaranteed by the parent company. Rule 3a-5(a)(3) requires that any parent guarantee provide that, in the event of a default in payment of amounts due under such debt securities, the holders of those securities be allowed to proceed directly against the parent company without first having to proceed against the finance company.

5. Applicant states that the Policies to be issued by FSA covering the MICs serve the underlying objectives of the rule 3a-5 guarantee, because the MIC holders will be provided with benefits substantially similar to those provided by the guarantee requirement of rule 3a-5. Each Policy will be an unconditional and irrevocable guarantee of payment of all amounts due under the MICs. Applicant asserts that there are no differences in the procedures that would be followed by the MIC holders to recover for any loss in the event of Applicant's default on a MIC as compared to the procedures for recovery in the event of a default under a rule 3a-5 guarantee. Applicant further states that FSA is subject to a comprehensive scheme of regulation and supervision under the insurance laws of each U.S. jurisdiction where it is licensed to do business, so that there is higher likelihood that FSA would be able to meet its obligations.

6. Applicant further asserts that the receipt of a Policy from FSA in lieu of an FSAH guarantee increases the likelihood that the MIC holders will be paid in full because creditors of FSAH are in effect structurally subordinated to creditors of FSA (and its subsidiaries). This is because FSAH's equity interest in FSA (including its subsidiaries) is approximately 68% of FSAH's assets and FSAH's only significant source of

funds with which to make payments is dividends or other payments from FSA.

7. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that its exemptive request meets the standards set out in section 6(c).

Applicant's Condition

Applicant agrees that any order issued on the application shall be subject to the following condition:

Applicant will comply with all of the provisions of rule 3a-5 under the Act, except: (1) In lieu of the parent guarantee requirement in rule 3a-5(a)(1), Applicant's obligations under each MIC will be fully insured by a Policy issued by FSA; (2) FSAH will not meet the portion of the definition of "parent company" under rule 3a-5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act; (3) Applicant will be permitted to make loans to each of FSAH's Insurance Company Subsidiaries, which do not meet the portion of the definition of "company controlled by the parent company" in rule 3a-5(b)(3)(i) solely because they are excluded from the definition of investment company under section 3(c)(3) of the Act; and (4) Applicant will be permitted to make loans to subsidiaries of FSAH that do not meet the portion of the definition of "company controlled by the parent company" solely because they would be excluded from the definition of investment company by virtue of rule 3a-3 under the Act, but FSAH's status as their parent company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47588; File No. SR-NASD-2003-37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the National Association of Securities Dealers, Inc. to Permanently Expand Order Entry Firm Access to SIZE in Nasdaq's SuperMontage System

March 28, 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"), 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 March 26, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.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 the Substance of the Proposed Rule Change

Nasdaq proposes to make permanent its current pilot allowing NNMS Order Entry Firms ("OE Firms") to enter non-marketable limit orders into SuperMontage using the SIZE Market Maker Identifier ("SIZE MMID" or "SIZE").⁴ In addition, this filing also makes permanent a number of non-substantive corrections to the written rules of the NNMS. The text of the proposed rule change is available at the NASD, the Office of the Secretary, and the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Thomas Moran, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 2003 ("Amendment No. 1"). Nasdaq submitted Amendment No. 1 to reflect that File No. NASD-2003-39, relating to anti-internalization qualifier values, had become immediately effective, and to delete dates in the rule text that are no longer applicable.

⁴ SIZE is an anonymous identifier 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 MMID. Instead, such interest is displayed next to the SIZE MMID.

company generally is eligible if it meets certain asset and income tests and it is (i) not an investment company as defined in section 3(a) of the Act; (ii) excluded from the definition of investment company by section 3(b) of the Act; or (iii) deemed not to be an investment company under rule 3a-1 under the Act.