

(2) No Change.

(3) Entry of Locking/Crossing Quotes/Orders The system shall process locking/crossing Quotes/Orders as follows:

(A) No Change.

(B) Locked/Crossed Quotes/Orders Immediately Before the Open—If the market is locked or crossed at 9:29:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an unlocked and un-crossed market condition is achieved. Between 9:29:30 a.m. and 9:29:59 Eastern Time, once NNMS has cleared a locked or crossed market, or if a newly submitted quote/order would create a locked or crossed market, NNMS will prevent a locked or crossed market from being created by processing such locking or crossing quote/order in a manner consistent with subparagraph (b)(3)(a) of this Rule.

(i) *Exception—The following exception shall apply to the above locked/crossed processing parameters:*

If a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other Quoting Market Participant or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710 (b) (1)(B)(iv)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a "Y" AIQ Value as provided for in Rule 4710 (b) (1)(B)(iv)(a).

(4) through (8) No Change.

(c) through (e) 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 August 23, 2002, the Commission approved SR-NASD-2002-56 establishing a uniform process for opening daily trading in Nasdaq's SuperMontage system.⁴ Part of that filing included a description of how SuperMontage would automatically clear locked or crossed markets immediately prior to the 9:30 a.m. Eastern Time Nasdaq market open. As described, SuperMontage would, commencing at 9:29:30 Eastern Time, match off the most aggressively priced locking and crossing quotes/orders against each other with any price improvement going to the oldest of the pair.

That filing, however, failed to make specific note of SuperMontage's present default programming that, prior to other processing, first attempts to match off any quote/order entered by a Nasdaq Quoting Market Participant against any quotes/order(s) entered by that same Nasdaq Quoting Market Participant on the other side of the market (if those quote/order(s) on the other side of the market are at the best bid or offer). Nasdaq represents that this general default preference in SuperMontage execution and delivery processing is followed both during normal trading⁵ as well as the pre-open unlocking/uncrossing spin. Nasdaq further represents that this filing proposes the addition of language to make that fact clear.

In addition, Nasdaq represents that this filing clarifies that, just like during the normal trading day, the Quotes/Orders of NNMS Order Entry Firms that become subject to the pre-opening unlocking/uncrossing processing will not automatically internalize first against best-priced trading interest entered by that same NNMS Order Entry on the other side of the market. Instead, such interaction will only take place if such Quotes/Orders would match off against each naturally during the unlocking/uncrossing process. NNMS Order Entry Firms may prevent any

interaction between its own buy and sell quotes through the use of the "Y" anti-internalization qualifier as permitted by NASD Rule 4710(b)(1)(B)(iv)(a). Finally, the filing clarifies that the Quoting Market Participants referred to in that part of the rule related to the Y AIQ value are Nasdaq Quoting Market Participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,⁶ in general and with section 15A(b)(6) of the Act,⁷ in particular, in that in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Nasdaq represents that the processing described in this filing has been previously approved by the Commission, as noted above, and recognizes the liquidity benefits that accrue to all market participants by providing incentives for quoting market participants to enter an expanded universe of quotes/orders on both sides of the market.

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

Nasdaq 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.

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 with respect to the proposed rule change.

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

The foregoing proposed rule change, as amended, has become effective on April 24, 2003, the date of filing of Amendment No. 1 to the proposed rule change, pursuant to section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(6)⁹

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

⁴ See Exchange Act Release No. 46410 (August 23, 2002); 67 FR 55897 (August 30, 2002).

⁵ See NASD Rule 4710(b)(1)(B)(iv)(a).