

Rule 2210 and the creation of IM-2210-7 into the proposed rule text. The Commission believes that these are technical changes, as the proposed changes have already been addressed by the Commission in a separate filing, and therefore do not need to be readdressed here.

Fifth, in Amendment No. 3, the NASD made changes to NASD Rule 2210's disclosure requirements for recommendations. These changes were made to conform the rule to the requirements contained in NASD Rule 2711,⁴¹ which governs research analysts and research reports. Previously, only NASD Rule 2210 imposed disclosure requirements on research reports.

The new disclosure requirements imposed by NASD Rule 2711 differ from those contained in current NASD Rule 2210, therefore, for consistency, the NASD amended NASD Rule 2210 to be more similar to the new requirements imposed by NASD Rule 2711 and to incorporate references to security futures. The Commission believes that coordinating the disclosure requirements contained in NASD Rules 2210 and 2711 is appropriate and will aid members in complying the rules.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether the Amendments are 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 the NASD. All submissions should refer to File No. SR-NASD-00-12 and should be submitted by June 9, 2003.

VII. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Act,⁴² that the proposed rule change (SR-NASD-00-12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴³

Margaret H. McFarland

Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47830; File No. SR-NASD-2003-37]

Self-Regulatory Organizations; Order Granting Approval to 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

May 12, 2003.

I. Introduction

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 ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change for the permanent approval of a pilot program which permits NNMS Order Entry Firms ("OE Firms") to enter non-marketable limit orders into SuperMontage using the SIZE Marker Maker Identifier ("SIZE MMID" or "SIZE").³ On March 26, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal**

⁴² 15 U.S.C. 78s(b)(2).

⁴³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On January 31, 2003, the Commission approved File No. SR-NASD-2002-173 on a 90-day pilot basis, which allowed OE Firms to enter non-marketable limit orders into Nasdaq's SuperMontage system using SIZE. See Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003). The 90-day pilot commenced on February 10, 2003. This filing seeks to make permanent the ability of OE Firms to enter orders into SuperMontage under essentially the same terms and conditions approved in the pilot program.

⁴ See letter from Thomas Moran, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 2003.

Register on April 3, 2003.⁵ The Commission received three comment letters regarding the pilot as originally approved,⁶ and the instant proposal, as amended.⁷ On May, 2, 2003, Nasdaq submitted a comment response letter.⁸ This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

As noted above, this filing seeks the permanent approval of the 90-day pilot program that allows OE Firms⁹ to enter non-marketable limit orders into SuperMontage using SIZE. Under the proposal, OE Firms may voluntarily enter non-marketable limit orders into SuperMontage with a Good-till-Cancelled ("GTC") or "Day" designation for display or execution through SIZE.¹⁰ OE Firms may enter multiple orders (with or without reserve size) at single or multiple price levels, use any available execution algorithm (price/time, price/time-with-fee-consideration, or price/size). Non-marketable limit orders entered by OE Firms would be subject to the automatic execution functionality of the system. If elected by the OE Firm, its orders on opposite sides of the market could match off against each other only if such

⁵ See Securities Exchange Act Release No. 47588 (March 28, 2003), 68 FR 16323.

⁶ See Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003).

⁷ See letters to Jonathan G. Katz, Secretary, Commission, from S. Jeffrey Martin, President, Automated Trading Desk Financial Services, LLC, and Steve Swanson, President, Automated Trading Brokerage Services, LLC, dated February 27, 2003 and March 6, 2003 ("ATD Letter"); from Duncan L. Niederauer, Managing Director and Co-Chief Executive Officer, Spear, Leeds & Kellogg, L.P., dated May 1, 2003 ("SLK Letter"); and from John Hughes, Chairman, and John C. Gieseke, President and Chief Executive Officer, Security Traders Association, dated April 9, 2003 ("STA Letter"). The two comment letters from ATD appear to be identical and, therefore, are being treated as one comment letter.

⁸ See letter from Thomas P. Moran, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated May 1, 2003 ("Response Letter").

⁹ Nasdaq submitted a letter to clarify that it interprets the term "NNMS Order Entry Firm" in a manner that may encompass NNMS Market Makers that are registered market makers in other stocks. In the SuperMontage system, such firms are treated the same as other OE Firms when placing orders into the system for stocks in which they do not make a market. Nasdaq notes that the provision of order-entry system access to firms that elect to register as market makers in less than the total universe of Nasdaq stocks also took place in the systems preceding SuperMontage—SelectNet and SuperSoes. See letter from Thomas P. Moran, Office of General Counsel, Nasdaq, to Marc McKayle, Special Counsel, Division, Commission, dated May 8, 2003.

¹⁰ Prior to the pilot, OE Firms were limited to the entry of market orders or limited orders designated as Immediate or Cancel ("IOC"). OE Firms may continue to submit IOC orders under the proposal.

⁴¹ See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).