

non-customers by the 6:30 p.m. (EST) deadline must use an electronic time stamp to record the time the member received the exercise decision from the non-customer options holder. This requirement is in response to Amex's concern that firms that manually submit CEAs or Advice Cancels could have an opportunity to improperly extend the 5:30 p.m. (EST) deadline to decide whether to exercise an expiring option. The Commission believes that the requirement that an electronic time stamp be employed in such circumstances adequately addresses these concerns.

Amex also proposed alternate time frames for exercise decisions and CEA and Advice Cancel submissions when trading times are modified. Specifically, if the Exchange announces a modified close of trading by 5:30 p.m. (EST) on the business day immediately prior to the last business day before expiration, then options holders will have 1 hour and 28 minutes after the close of trading to make a decision whether to exercise an expiring option and members will have 2 hours and 28 minutes to submit CEAs and Advice Cancels of customers and non-customers to the Exchange.²⁹ In addition, Amex proposed to allow it to extend cut-off times for exercise decisions and CEA and Advice Cancel submissions due to unusual circumstances³⁰ and on a case-by-case basis. Finally, Amex proposed to allow it to reduce cut-off times for exercise decisions and CEA and Advice Cancel submissions due to unusual circumstances³¹ so long as the Exchange provides at least one business day prior notice, by 12 noon on such day. If the Exchange reduces cut-off times, however, they cannot set such cut-off times before the close of trading.

As noted above, several commenters raised concerns regarding the Exchange's ability to modify the cut-off

times. The Commission believes that Amex addressed commenters concerns by requiring that advance notice be provided in the event that Amex modifies the cut-off times due to either modified trading hours or unusual circumstances. The Commission believes that the advance notice requirements should enable members to notify customers and non-customers of the modified cut-off times.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended by Amendment Nos. 1, 2, 3 and 4, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,³² that the proposed rule change, as amended, (SR-Amex-2001-92) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47883; File No. SR-NASD-2003-72]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Reduce the Non-Directed Order Maximum Response Time for Order-Delivery ECNs in Nasdaq's SuperMontage System

May 16, 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 April 14, 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 May 15, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule

change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reduce, from 30 seconds to 7 seconds, the maximum time allowed for Nasdaq's National Market Execution System ("NNMS") Order-Delivery Electronic Communications Networks ("Order-Delivery ECNs") to respond to non-directed orders sent to them by Nasdaq's SuperMontage system ("SuperMontage"). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders.

(1) No Change.

(A) through (B) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferred Order in an amount equal to the system-delivered order or execution.

(i) No Change.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within [30] 7 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the

²⁹ As required above, members must use an electronic time stamp for non-customer exercise decisions. If a member does not employ an electronic time stamp procedure, then it must submit the CEAs and Advice Cancels of non-customer options holders within 1 hour and 28 minutes following the close of trading.

³⁰ For purposes of extending cut-off times, Amex defined "unusual circumstances" as including increased market volatility, significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal systems malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

³¹ For purposes of reducing cut-off times, Amex defined "unusual circumstances" as including a significant news announcement concerning the underlying security of an options contract that is scheduled to be released just after the close of trading on the business day immediately prior to expiration.

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2003 ("Amendment No. 1"). Amendment No. 1: (1) Inserts a section I to Exhibit 1 of the filing that Nasdaq inadvertently excluded; and (2) clarifies in the purpose section of the proposal that Nasdaq believes that commenters concerns regarding prior SuperMontage system issues related to the delivery of orders to market participants are no longer valid.