

rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F) of the Act, which requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control or for which it is responsible.⁸ The Commission finds that by having the ability to require an additional clearing fund deposit or deposits in the form of letters of credit in circumstances as described above, the proposed rule change will help to ensure that GSCC has adequate clearing fund assets available to it in the event that it must liquidate the collateral of an insolvent participant. Additionally, the change to GSCC's insolvency rule to include references to certain insolvency proceedings against foreign members will better equip GSCC to handle the financial difficulties of foreign members and should help GSCC to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. Therefore, the proposed rule change is consistent with GSCC safeguarding obligations under section 17A(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-00-12) be, and hereby is, approved.

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. 34-47993; File No. SR-NASD-2003-81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Quote Decrementation in SuperMontage

June 5, 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 May 12, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with 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 May 29, 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 modify how the quotes of order-delivery Electronic Communication Networks ("ECNs") in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage") will be decremented after they decline an order shipped to them, or partially fill an order sent to them, or fail to respond to the delivery within 30 seconds.⁴ Under the proposal, order-delivery ECNs that decline an order, partially fill an order, or fail to respond within 30 seconds to orders sent to them ("time-out") by SuperMontage will no longer have all of their trading interest at or better than the declined price level

removed from the system. Instead, the system after a decline, partial fill, or time-out, will remove the entire amount of each individual quote(s)/order(s) to which the orders was delivered to by NNMS. The proposed rule text is as follows:

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

4710. Participant Obligations in NNMS

(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) 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) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(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 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] *eligible Quote/Order* in queue. The system then will zero out [the] *those ECN[s] Quote/Orders to which the Non-Directed Order was delivered*. [at that price level on that side of the market,] *If there are no other Quote/Orders at the declined price level*, [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 bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 29, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq replaced the proposed rule change in its entirety.

⁴ Nasdaq's original target date for implementation of this proposal, if approved by the Commission, was June 16, 2003. Nasdaq has revised its intended implementation time-frame for mid-July 2003, and will notify the Commission and market participants when a firm date has been set. Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission on June 5, 2003.

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 200.30-3(a)(12).