

and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-16711 Filed 7-1-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48088; File No. SR-NASD-2003-85]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendments No. 1 and 2 Thereto Relating to a Post-Trade Anonymity Feature in SuperMontage

June 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 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 Nasdaq has prepared. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On June 23, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.<sup>4</sup> 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 is seeking to add a post-trade anonymity feature to its SuperMontage trading system.

The text of the proposed rule change is below. Proposed new text is *italicized* and proposed deleted text is [bracketed].

\* \* \* \* \*

#### 4712. *Obligation To Honor System Trades*

(a) If an NNMS Participant, or clearing member acting on his behalf, is reported by NNMS to clearing [at the close of any trading day], or shown by the activity reports generated by NNMS as constituting a side of a System trade, such NNMS Participant, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.

(b) *Nasdaq shall have no liability if an NNMS Participant, or a clearing member acting on his behalf, fails to satisfy the obligations in paragraph (a).*

#### 4719. *Anonymity*

(a) *Transactions executed in NNMS in which at least one member submits a Non-Attributable Quote/Order will be processed anonymously. The transaction reports will indicate the details of the transactions, but will not reveal contra party identities.*

(b)(1) *The processing described in paragraph (a) shall not apply to transactions executed in NNMS when the member whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.*

(2) *Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.*

(c)(1) *The Association may reveal a member's identity when the National Securities Clearing Corporation ("NSCC") ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades.*

(2) *The Association may reveal a member's identity for regulatory*

identities of the members that execute anonymous trades through SuperMontage for six years in order to satisfy members' record keeping obligations under Securities Exchange Act Rules 17a-3(a)(1) and 17a-4(a).

*purposes or to comply with an order of an arbitrator or court.*

(3) *The Association may reveal a member's identity on risk management reports provided to the member's contra parties each day after 4 p.m., which disclose trading activity on an aggregate dollar value basis.*

\* \* \* \* \*

### 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

Nasdaq proposes to add a post-trade anonymity feature to SuperMontage in response to demand from members. Today, systems that provide automatic executions of orders for Nasdaq stocks are commonplace and often it is the additional features offered by a system that determines whether market participants send orders to that system or a competing system. One such feature valued by market participants today is the ability to trade anonymously. When a member seeks to trade anonymously, it wants to prevent its contra party from knowing its identity.

Anonymity is important to market participants because sometimes the identity of a party can reveal important "market intelligence" and complicate a member's ability to execute its customer orders. For example, if members see a pattern in which a particular member is actively buying a security, and it is commonly known that this member handles the orders of several very large institutional customers, such as pension funds or mutual funds, the other members can adjust their trading strategy for that security in anticipation of the strong demand that should develop as the member attempts to fill the order of one or more of its large institutional customers. In such a scenario, the natural result is that the price of the security increases and it becomes more expensive to fill the order. This result commonly is referred

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Nasdaq added rule language in paragraph (c) of NASD Rule 4719 that states that the Nasdaq staff can limit a member's ability to submit anonymous orders upon request of the member's firm. This provision was subsequently withdrawn in Amendment No. 2.

<sup>4</sup> See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated June 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the Nasdaq withdrew the provision to restrict a member's ability to submit anonymous orders upon request of the member's firm in paragraph (c) of NASD Rule 4719. Nasdaq also codified the proposal, through proposed paragraph (c) of NASD Rule 4719, to indicate that a member's identity may be revealed:

(1) When the National Securities Clearing Corporation ("NSCC") ceases to act for a member or the member's clearing firm; (2) for regulatory purposes, or upon the order of a court or arbitrator; and (3) after 4 p.m. on trade date on an aggregate basis. Nasdaq also represented that it will retain the