

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. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission.<sup>5</sup> The Commission is publishing this notice 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 increase, from 7 seconds to 30 seconds, the maximum time allowed for Nasdaq's National Market Execution System ("NNMS") Order-Delivery Electronic Communications Networks ("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.

\* \* \* \* \*

#### **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 bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

- (iii) through (iv) No Change.
- (D) No Change.
- (1) 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 June 24, 2003, the Commission approved a proposed rule change in which Nasdaq reduced, from 30 seconds to 7 seconds, the maximum time allowed for NNMS Order-Delivery ECNs to respond to non-directed orders sent to them by SuperMontage ("the original proposal").<sup>6</sup> Under the original proposal, if an Order-Delivery ECN had failed to respond within 7 seconds, the delivered non-directed order would be canceled by SuperMontage and forwarded to the next NNMS Quoting Market Participant in queue for execution, and the ECN's quote at the price level on the side of the market to which the order was delivered would be reduced to zero.<sup>7</sup>

Since the approval of the original proposal, and prior to its implementation, Nasdaq has become aware of internal system processing queues that, in certain circumstances, do not allow adequate time for ECNs to receive and respond to SuperMontage non-directed orders using a 7-second standard. As a result, Nasdaq has determined to temporarily delay implementation of the 7-second maximum response time and revert back to previous 30-second maximum response time. Nasdaq represents that it is currently introducing system enhancements that are expected to eliminate the queuing problem and will submit a proposed rule change to the Commission seeking to implement a reduced ECN non-directed order response time parameter as soon as practicable.

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act<sup>8</sup> in general, and with section 15A(b)(6) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

#### **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.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the

state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The NASD has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See Securities Exchange Act Release No. 48078, 68 FR 39171 (July 1, 2003) (SR-NASD-2003-72).

<sup>7</sup> Nasdaq represents that 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

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(6).