

Credit to member providing liquidity	\$0.002 per share executed (but no more than \$80 per trade for trades in securities executed at \$1.00 or less per share)
Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share)
Directed Order	\$0.003 per share executed
Non-Directed or Preferred Order entered by a <i>member</i> [Nasdaq Quoting Market Participant] that accesses its own Quote/Order.	No charge
[Non-Directed Order entered by an NNMS Order Entry Firm that accesses its own Quote/Order].	[\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share)]
Order Cancellation	
Non-Directed and Preferred Orders	No charge
Directed Orders	\$0.10 per order cancelled

(j)–(s) 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 May 12, 2003, the Commission approved⁵ on a permanent basis a proposed rule change to allow OE Firms⁶ to enter non-marketable limit orders into SuperMontage using the SIZE Market Participant Identifier ("SIZE").⁷ The program had originally been approved on a 90-day pilot basis, beginning on February 10, 2003.⁸

At the beginning of the 90-day pilot period, Nasdaq did not assess a charge (or provide a liquidity provider credit) when a market participant's non-

directed or preferred order executed against its own Quote/Order. Effective April 1, 2003, however, Nasdaq modified its SuperMontage fee schedule to provide that an OE Firm entering a non-directed order that accesses a limit order that the OE Firm itself posted in SIZE would pay \$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share).⁹ In situations where a Quoting Market Participant's order executes against its own Quote/Order, however, the order execution remained free.

The discount for Quoting Market Participants is based, in part, on an expectation that, in its absence, many Quoting Market Participants would internalize a greater percentage of orders through their own proprietary crossing systems, rather than exposing them to the full market. Based on experience with the program for OE Firms' use of SIZE, however, Nasdaq has concluded that applying the discount to OE Firms' orders may also encourage OE Firms to expose a greater percentage of their orders through SuperMontage, in lieu of internalizing them or routing them to competing market centers. Accordingly, Nasdaq is eliminating the \$0.001 fee applicable to order executions in which an OE Firm's non-directed order is matched with the same firm's order in SIZE.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act¹⁰ in general, and with Section 15A(b)(5) of the Act¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq states that the proposed rule change will result in an elimination of

the fees payable by an OE Firm for non-directed orders that execute against orders entered by the OE Firm in SIZE. As a result, Nasdaq believes that the fees assessed on OE Firms and Quoting Market Participants for use of SuperMontage will now be identical in all respects.

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 and 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder,¹³ because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

⁵ See Securities Exchange Act Release No. 47830 (May 12, 2003), 68 FR 27126 (May 19, 2003) (SR-NASD-2003-37) ("May Approval Order").

⁶ As noted in the May Approval Order, Nasdaq interprets the term "NNMS Order Entry Firm" to encompass NNMS Market Makers to the extent that they do not make markets in particular stocks. In SuperMontage, 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.

⁷ SIZE is the anonymous market participant identifier ("MPID") that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MPID.

⁸ See Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003) (SR-NASD-2002-173).

⁹ See Securities Exchange Act Release No. 47530 (March 19, 2003), 68 FR 14730 (March 26, 2003) (SR-NASD-2003-30).

¹⁰ 15 U.S.C. 78o-3.

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² 15 U.S.C. 78s(b)(3)(a)(ii).

¹³ 17 CFR 240.19b-4(f)(2).