

Members. The Commission believes that this proposed rule change, as amended, should foster cooperation and promote a relationship between the ISE and the OCC that is conducive to the effective operation of the Linkage.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change, as amended, (File No. SR-ISE-2003-15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48501; File No. SR-NASD-2003-128]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Establishing a Maximum ECN Access Fees in SuperMontage and Elimination of SuperMontage's Price/Time With Fee Consideration and Price/Size Execution Algorithms

September 17, 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 August 11, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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 September 10, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Nasdaq filed Amendment No. 2 to the proposed rule change on September 15, 2003.⁴ 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 amend NASD Rules 4623 and 4710 to: (1) establish a maximum level of quote/order access fees for Electronic Communications Networks ("ECNs") that elect to participate in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage"); (2) eliminate SuperMontage's Price/Time with access fee consideration execution algorithm; and (3) eliminate SuperMontage's Price/Size execution algorithm. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

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4623. Alternative Trading Systems

(a) No Change.

(b) An ATS or ECN that seeks to utilize the Nasdaq-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to Nasdaq voluntarily shall:

(1) through (5) No Change.

(6) not charge to broker-dealers that access the ATS or ECN through *The Nasdaq National Market Execution System (SuperMontage)* any fee that is inconsistent with the requirements of SEC Rule 301(b)(4) *or that exceeds \$0.003 per share.*

(c) No Change.

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4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (v) No Change.

(w) The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS. *This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. NNMS Order Entry Firms shall not charge any fee to a broker-dealer that accesses the NNMS Order Entry Firm's quote/order through NNMS.*

(x) through (jj) No Change.

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Amendment No. 2, Nasdaq made technical corrections to its rule text.

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(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) Obligations For each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 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 Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2003, replacing Nasdaq's original Form 19b-4 filing in its entirety ("Amendment No. 1").

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 12, 2003 ("Amendment No. 2"). In