

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-128 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48527; File No. SR-NASD-2003-85]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendments No. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, 5, and 7 Thereto Relating to a Post-Trade Anonymity Feature in SuperMontage

September 23, 2003.

I. Introduction

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 ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to add a post-trade anonymity feature to SuperMontage. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.³ On June 23, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on July 2, 2003.⁵ The Commission received five comment letters on the proposal, as amended by Amendment Nos. 1 and 2.⁶ On August 6, 2003, Nasdaq filed a response to the comment letters.⁷ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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").

⁴ 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").

⁵ See Securities Exchange Act Release No. 48088 (June 25, 2003), 68 FR 39605 (July 2, 2003) ("Notice").

⁶ See Letters to Jonathan G. Katz, Secretary, Commission, from Jim Dyer, Senior Vice President & Trading Room Manager, Brokerage America, LLC, dated July 24, 2003 ("BAMM Letter"); Kim Bang, Bloomberg Tradebook LLC, dated July 24, 2003 ("Bloomberg Letter"); William O'Brien, Chief Operating Officer, Brut, LLC, dated July 29, 2003 ("Brut Letter"); C. Thomas Richardson, Managing Director, Citigroup Global Capital Markets, Inc., dated July 25, 2003 ("Citigroup Letter"); and John Hughes, Chairman, and John C. Giese, President and Chief Executive Officer, Security Traders Association, dated July 23, 2003 ("STA Letter"). The letters are described in Section III, *infra*.

⁷ See Letter from Edward S. Knight, Executive Vice President, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated August 4, 2003 ("Nasdaq Response Letter").

August 11, 2003, Nasdaq filed Amendment No. 3 to the proposed rule change.⁸ On September 8, September 16, September 17, and September 22, 2003, Nasdaq filed Amendment Nos. 4,⁹ 5,¹⁰ 6,¹¹ and 7¹² respectively, to the proposed rule change. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment Nos. 3, 4, 5, and 7.

II. Description of the Proposed Rule Change

Nasdaq's current pre-trade anonymity feature allows market makers, electronic communication networks ("ECNs") and order entry firms ("OE Firms") to submit anonymous orders to SuperMontage for display under the "SIZE" market participant identifier

⁸ See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated July 31, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq clarified in certain NASD rules that Nasdaq will remove a member from Nasdaq's systems when the member loses its clearing relationship. Members removed from a Nasdaq system can invoke their right to seek redress under the NASD Rule 9700 Series. The amendment also contains non-substantive changes to NASD Rules 4705, 5012, and 6120 to reflect that indirect participation in a clearing agency occurs through a "participant," as such term is defined in Section 3(a)(24) of the Act.

⁹ See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Marc McKayle, Special Counsel, Division, Commission, dated September 4, 2003 ("Amendment No. 4"). In Amendment No. 4, Nasdaq created an additional exception to the anonymous processing of orders; made technical corrections in its rule text clarifying that Nasdaq must reveal member's identity in certain circumstances; explained how the help desk will operate to assist members with anonymous trades; and clarified Nasdaq's record keeping obligations.

¹⁰ See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated September 15, 2003 ("Amendment No. 5"). In Amendment No. 5, Nasdaq codified its earlier representations regarding retention of information on behalf of its members to satisfy the members' books and records obligation. See Amendments 2 and 4, *supra* notes 4 and 9, respectively.

¹¹ See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Thomas McGowan, Assistant Director, Division, Commission, dated September 16, 2003 ("Amendment No. 6"). In Amendment No. 6, Nasdaq made a technical correction to its rule text to clarify those circumstances when members would be required to retain their recordkeeping obligations.

¹² See Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Thomas McGowan, Assistant Director, Division, Commission, dated September 17, 2003 ("Amendment No. 7"). In Amendment No. 7, Nasdaq, in essence, withdrew Amendment No. 6 since it replaced in its entirety proposed Rule 4719(e)(ii), which was initially proposed in Amendment No. 5 and subsequently amended by Amendment No. 6.

⁸ 17 CFR 200.30-3(a)(12).