

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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2003-44 and should be submitted by November 6, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval on a Pilot Basis

After careful review, the Commission finds that proposed Interpretation .03 to CBOE Rule 6.25 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed Interpretation is consistent with the requirements of Section 6(b)(5)⁸ of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals 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.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade is such that execution of a trade at that particular price indicates that an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria

and subject to specific and objective procedures. The Commission believes that CBOE's proposed Interpretation .03 to CBOE Rule 6.25 establishes such specific and objective criteria for determining when a trade may involve an "obvious price error," and thus may be adjusted or nullified in a fair and non-discriminatory manner. The Commission notes that if there are no quotes for comparison, CBOE has specified that trading officials may determine the Theoretical Price, which would then be used to adjust or nullify transactions resulting from an obvious price error.

The Commission finds good cause, pursuant to Section 6(b)(5)⁹ and Section 19(b)¹⁰ of the Act, to accelerate approval of Interpretation .03 to CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal are substantially similar to CBOE's SBT obvious price error rule, CBOE Rule 43.5(b)(5), which the Commission has approved.¹¹ The Commission also notes that it has recently approved "obvious error" rules for ISE and PCX that provide procedures for the nullification or adjustment of a trade.¹² Furthermore, the provisions of the proposed rule change would be in effect on a temporary basis until the earlier of approval of File No. SR-CBOE-2001-04 or December 1, 2003, whichever occurs earlier. Finally, the Commission notes that the procedures to implement Interpretation .03 to CBOE Rule 6.25 were adopted on a pilot basis in Securities Exchange Act Release No. 48556.¹³ The Commission finds, therefore, that granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)¹⁴ of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that Interpretation .03 to CBOE Rule 6.25, as set forth in the proposed rule change be

and hereby is approved on an accelerated basis. Interpretation .03 to CBOE Rule 6.25 specifies that the Interpretation will expire upon final Commission approval of File No. SR-CBOE-2001-04 or December 1, 2003, whichever occurs earlier.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48606; File No. SR-NASD-2003-134]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend Rule 4710 To Allow Nasdaq National Market Execution System Order Entry Firms To Automatically Internalize in SuperMontage

October 8, 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 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 Items have been prepared by Nasdaq. On September 26, 2003, Nasdaq amended the proposed rule change.³ 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 Rule 4710 to allow the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to automatically

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b).

¹¹ See Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR-CBOE-00-55).

¹² See Securities Exchange Act Release No. 48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (File No. SR-PCX-2002-01); and Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (File No. SR-ISE-2003-10).

¹³ See *supra* note 3.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

¹⁶ 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 Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq expands upon the purpose of the proposed rule change.