

million. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 60.0 million shares to a low of 138.7 thousand shares. As of August 29, 2003, the aggregate market value of the 500 companies included in the Index represented approximately 77% of the aggregate market value of stocks included in the Standard & Poor's Stock Guidance Database of domestic common stocks traded in the U.S., excluding American depositary receipts, limited partnerships and mutual funds. Standard & Poor's chooses companies for inclusion in the Index with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the Standard & Poor's Stock Guide Database. Furthermore, as of August 29, 2003, ten main groups of companies comprise the Index with the percentage weight of the companies included in each group indicated in parentheses: Consumer Discretionary (11.4%), Consumer Staples (11.4%), Energy (5.8%), Financials (20.5%), Health Care (13.6%), Industrials (10.8%), Information Technology (17.4%), Materials (2.9%), Telecommunication Services (3.5%), and Utilities (2.8%).

Given the large diversification, capitalization, and relative percentage weightings of the companies included in each group of companies comprising the Index, the Commission continues to believe, as it has concluded previously, that the listing and trading of securities that are linked to the Index, should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the Commission also believes that the relative percentage weightings of the ten groups of companies comprising the Index should ensure that no one stock or group of stocks significantly minimize the potential for manipulation of the Index. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are with listed on Nasdaq, the NYSE, or the AMEX. In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow

investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.<sup>24</sup> Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,<sup>25</sup> to approve the proposal, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NASD-2003-155) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48675; File No. SR-NASD-2003-143]

### 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. To Establish a New "Auto-Ex" Order in Nasdaq's SuperMontage System

October 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 24, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 filed Amendment No. 1 to the proposed rule change on October 3, 2003.<sup>3</sup> Nasdaq

<sup>24</sup> See note 15, *supra*.

<sup>25</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 2, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq amended the proposal to designate the proposed rule change as filed under

filed Amendment No. 2 to the proposed rule change on October 21, 2003.<sup>4</sup> 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 establish a new "Auto-Ex" order in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage"). Nasdaq intends to implement the proposed rule change as soon as possible following Commission approval and will inform market participants of the exact implementation date via a Head Trader alert on <http://www.nasdaqtrader.com>. The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

\* \* \* \* \*

#### 4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

##### 4701. Definitions

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

- (a)-(jj) No change.
- (kk) *The term "Auto-Ex" shall mean, for orders so designated, an order that will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.*

\* \* \* \* \*

##### 4706. Order Entry Parameters

###### (a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

section 19(b)(2) rather than section 19(b)(3)(A) of the Act and replaced the original filing in its entirety.

<sup>4</sup> See letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 21, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq amended the proposed rule text and clarified certain aspects of the proposed rule change which included, in part, stating that all Nasdaq market participants would be permitted to enter Auto-Ex orders and that Auto-Ex orders would access liquidity available at multiple price levels, but under no circumstances would the order "trade through" the Quote/Order of an Order-Delivery ECN (or an auto-ex participant that charged an access fee).