

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel", or as a "Day" or a "Good-till-Cancelled" order. If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender. If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

An order may be designated as "Auto-Ex," in which case the order will also automatically be designated as IOC.

(C)-(F) No change.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms "In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order[-]Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may also designate orders as "Auto-Ex," in which case the order will also automatically be designated as IOC. For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes

non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) No change.

(b)-(e) No change.

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4710. Participant Obligations in NNMS

(a) No change.

(b) Non-Directed Orders

(1) No change.

(A) No change.

(B) No change.

(i)-(iii) No change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

a.-c. No change.

d. *An Auto-Ex order 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 ("Auto-Ex Eligible Participants"). When processing an Auto-Ex order, however, the NNMS will not deliver an execution to an Auto-Ex Eligible Participant if the Quote/Order of an NNMS Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. An Auto-Ex order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.*

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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

Nasdaq proposes to introduce a new SuperMontage order type, to be designated as the Auto-Ex order. The purpose of the order is to allow market participants to manage more precisely the timing of executing orders through SuperMontage. Accordingly, the order

will execute solely against the Quotes/Orders of SuperMontage participants that participate in the system's automatic execution functionality. According to Nasdaq, many market participants and their customers place a high value on the speed of order execution, especially in circumstances where the price of a security may be moving rapidly. SuperMontage's automatic execution functionality was designed to offer market participants a speed of execution that is as fast as technically feasible "on average, less than a second between order entry and order execution. However, in circumstances where a market participant values speed, it may be unable to receive the benefits of the system's efficiency if all or a portion of its order is delivered to an NNMS Order-Delivery ECN, which has up to 30 seconds to respond to the order (and which may respond by declining to fill the order).⁵ By contrast, many ECNs offer extremely rapid execution speeds to orders submitted to them directly. As a result, firms seeking rapid execution may avoid using SuperMontage and submit order directly to ECNs. The new order type will also allow an ECN subscriber that has submitted an order directly to an ECN to simultaneously access liquidity available from SuperMontage auto-ex participants without running the risk that its SuperMontage order will be delivered to the ECN to which it has already submitted an order.⁶

Nasdaq believes that its market participants should have the option of seeking rapid, automatic executions through SuperMontage, as well as through direct connections with ECNs. Accordingly, the proposed Auto-Ex order would be eligible for execution solely against the Quotes/Orders of automatic execution participants.⁷

⁵ In a prior filing, Nasdaq noted that the average response time of order-delivery ECNs is less than one second. See Securities Exchange Act Release No. 48078 (June 24, 2003), 68 FR 39171 (July 1, 2003) (SR-NASD-2003-72). See also Securities Exchange Act Release No. 48196 (July 17, 2003), 68 FR 43777 (July 21, 2003) (SR-NASD-2003-108). Nasdaq notes that the response time to particular orders may be far longer, however. In addition, in many instances an ECN responds by declining to execute an order delivered to it. In that case, a rapid response by the ECN does not translate into a rapid execution of the order delivered to it.

⁶ See Amendment No. 2, *supra* note 4.

⁷ To help market participants control the costs of automatic order execution, an automatic execution participant that charged a separate quote-access fee to participants accessing its Quotes/Orders through SuperMontage would also be ineligible to receive an execution of an Auto-Ex order. However, it should be noted that none of Nasdaq's current automatic execution participants charges a separate quote access fee. Thus, the order would execute