

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 has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the rule effective upon Commission receipt of this filing. The Commission is

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to eliminate certain of the fees for the cancellation and cancel/replace of Quotes/Orders in Nasdaq's SuperMontage system. Nasdaq will implement the rule change on February 3, 2003.

The text of the proposed rule change is below. Proposed new language is in

italics; proposed deletions are in brackets.

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Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry

Non-Directed Orders (excluding Preferred Orders) No charge.

Preferred Orders:

Preferred Orders that access a Quote/Order of the member that entered the Preferred Order) No charge.

Other Preferred Orders \$0.02 per order entry.

Directed Orders \$0.10 per order entry.

Order Execution

Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:

Charge to member entering order \$0.003 per share executed (but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share).

Credit to member providing liquidity \$0.002 per share executed (but no more than \$80 per trade for trades in securities executed at \$1.00 or less per share).

Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.

Directed Order \$0.003 per share executed.

Non-Directed or Preferred Order entered by a member that accesses a Quote/Order of such member. No charge.

Order Cancellation

Non-Directed and Preferred Orders [(excluding Preferred Orders)].

[Preferred Orders] [No charge].

Directed Orders \$0.01 per order cancelled.

[Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants]

[Initial entry of Quote/Order] [No charge].

[Change of Quote/Order due to order execution through SuperMontage].

[Cancel/replace of Quote/Order to increase size] [No charge].

[Cancel/replace of Quote/Order to change price] [No charge].

[Cancel/replace of Quote/Order to decrease size manually] [No charge].

[Cancellation of Quote/Order] [No charge].

[Cancellation of Quote/Order due to order purge or timeout] [No charge].

(j)–(s) No change.

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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 is proposing to eliminate: (i) The fee for the cancellation and cancel/replace of Quotes/Orders in SuperMontage and (ii) the fee for

canceled non-directed and preferred orders entered into SuperMontage.

Nasdaq first introduced a "quotation update" fee in February 2002 in connection with its SuperSOES system, to encourage efficient quoting and to help ensure that system capacity could keep pace with the growth of quotation update volume.⁵ With the introduction of SuperMontage, Nasdaq refined the quotation update fee by applying it only for updates that remove liquidity without an execution occurring or that change the price of a Quote/Order.⁶

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 45342 (January 28, 2002), 67 FR 5019 (February 1, 2002) (SR-NASD-2001-96).

⁶ See Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR-NASD-2002-44).