

Thus, the fee has not been assessed for changes to SuperMontage Quotes/Orders that add liquidity or that occur when an order execution occurs.

Nasdaq has recently made several enhancements to the capacity of its network systems. Specifically, hardware upgrades and improvements in system architecture have resulted in a doubling of quote update processing capability since the time when the fee was first introduced. In addition, the decision of several electronic communications networks not to participate in SuperMontage will result in a decrease in Nasdaq's quote update traffic. As a result of these factors, Nasdaq has determined that the elimination of the quote update fee is unlikely to result in a volume of quotation updates that will strain the capacity of Nasdaq's systems. Accordingly, Nasdaq is eliminating the fee in order to lower the overall cost of market participants' use of SuperMontage. Nasdaq is also eliminating the fees for cancellation of non-directed and preferenced orders entered into SuperMontage, to allow a further reduction of market participants' costs.⁷

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ including Section 15A(b)(5) of the Act,⁹ which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

⁷ The elimination of order cancellation fees is correlative to the elimination of the fee for cancellation of Quotes/Orders, since Nasdaq's billing systems are not currently programmed to distinguish between cancellation messages that relate to orders entered as non-directed or preferenced orders and those that are entered as Quotes/Orders.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

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

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder.¹¹ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and 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 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-2003-10 and should be submitted by February 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47301; File No. SR-NASD-2002-173]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. To Establish a 90-Day Pilot Program To Allow NNMS Order Entry Firms To Enter Non-Marketable Limit Orders Into SuperMontage Using the SIZE MMID

January 31, 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 December 2, 2002, 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") a proposed rule change, as described in Items I and II below, which Items have been prepared by Nasdaq. The NASD amended its proposal on December 23, 2002,³ January 29, 2003,⁴ and January 30, 2003.⁵ The Commission is publishing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Edwards S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 20, 2002, replacing the original Form 19b-4 in its entirety ("Amendment No. 1"). In Amendment No. 1, Nasdaq clarified that NNMS Order Entry Firms would be allowed to enter multiple orders (with or without reserve size) at single or multiple price levels and be subject to automatic execution functionality of the system. Nasdaq also explained that any order entered by a NNMS Order Entry Firm that created a locked/crossed market would be processed like other locking/crossing quotes/orders as set forth in Rule 4710(b)(3). Furthermore, Nasdaq made corrections to its rule text and requested accelerated approval of the proposed rule change on a 90-day pilot basis.

⁴ See letter from Edwards S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 29, 2003, replacing in its entirety the original Form 19b-4 and Amendment No. 1 ("Amendment No. 2"). In Amendment No. 2, Nasdaq represented that additional programming to distinguish NNMS Order Entry Firms from Nasdaq Quoting Market Participants for internalization purposes would be implemented on or before April 28, 2003. Furthermore, Nasdaq provided additional rationale for its request for accelerated approval by the Commission, and made corrections to its rule text.

⁵ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated January 30, 2003 ("Amendment No. 3"). In Amendment No. 3, Nasdaq made conforming changes to its definitions in Rule 4701 and made corrections in Rule 4710(b)(1)(B) to incorporate the changes made under the proposed rule change, as amended.