

addition, specifically including language in NASD Rule 5420 concerning the obligation to report on the following day pre-open trades not reported before 9:30 a.m. on trade date will clarify members' trade reporting responsibilities and should facilitate proper reporting of trades. Finally, modifying the language in NASD Rule 6420 also clarifies members' trade reporting responsibilities and should facilitate proper reporting of trades.

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.

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

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,¹⁷ and Rule 19b-4(f)(1)¹⁸ thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the 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. The programming changes that will append the .T modifier automatically are scheduled for implementation on, or about, November 3, 2003.

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-2003-154 and should be submitted by December 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48821; File No. SR-NASD-2003-134]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 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

November 21, 2003.

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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 4710 to allow the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to automatically match any non-directed buy and sell quotes/orders entered by an NNMS Order Entry Firm against the quotes/orders of that same NNMS Order Entry Firm on the other side of the market if such a quote/order on the other side of the market is at the best bid/offer in

Nasdaq. On September 26, 2003, Nasdaq amended the proposed rule change.³

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 16, 2003.⁴ The Commission received no comments on the proposal, as amended. On November 19, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.⁵ This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2.⁶

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷ In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b) of the Act⁸ in general, and furthers the objectives of Section 15A(b)(6)⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Specifically, the Commission finds that Nasdaq's proposal, as amended, provides NNMS Order Entry Firms with the same opportunity as other Nasdaq market participants to have their quotes/orders on opposite sides of the market match off against each other.

For the foregoing reasons, the Commission finds that the proposed

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").

⁴ See Securities Exchange Act Release No. 48606 (October 8, 2003), 68 FR 59659 ("Notice").

⁵ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated November 19, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq revised the text of the proposed rule change to correct a typographical error and to clarify that there would be no change to paragraphs (b)(1)(B)(iv)(c), (b)(1)(C) or (b)(1)(D) of NASD Rule 4710. This was a technical amendment and is not subject to notice and comment.

⁶ Nasdaq represented that it would implement the proposed rule change, as amended, within 60 days after approval by the Commission. See Notice, *supra* note 4.

⁷ In approving the proposed rule change, as amended, 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. 78o-3(b).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁸ 17 CFR 240.19b-4(f)(1).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.