

in this manner, the order may also be executed by (or receive delivery of) displayed Discretionary Orders with discretionary price ranges that overlap with the incoming Discretionary Order's discretionary price range, in conformity with this rule and subject to any applicable exception. The unexecuted portion of a Discretionary Order will then be retained by NNMS for potential display in conformity with Rule 4707(b).

When a Discretionary Order is displayed as a Quote/Order, Non-Directed Orders or Quotes/Orders entered at the displayed price (including incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Non-Directed Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Non-Directed Order or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Non-Directed Orders and Quotes/Orders entered by NNMS Participants in the automatic execution functionality of the NNMS, and will be delivered to Non-Directed Orders and Quotes/Orders entered by NNMS Order-Delivery ECNs.

For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.

(C)–(D) No change.

(2)–(8) No change.

(c)–(e) 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

To provide increased functionality to system users, Nasdaq proposes to adopt a new order type, DO, for use in SuperMontage. A DO would allow market participants to enter an order that has both a displayed bid or offer price and a non-displayed discretionary price range within which the participant is also willing to buy or sell, if necessary. For example, a market participant may enter a DO to buy at \$20.00, with a discretionary price range of \$0.05, thereby indicating that the market participant wishes to buy at \$20.00, but is also willing to pay up to \$20.05, if necessary. If the \$20.00 price matches the best offer (i.e., if the \$20.00 price is marketable), the DO would first execute against Quotes/Orders and reserve size at that price. If the \$20.00 price is not marketable, or if size available at that price is exhausted, the DO would next execute against Quotes/Orders (including DOs at their displayed prices) and reserve size at successively higher prices, up to \$20.05, and then interact with displayed DOs with overlapping discretionary price ranges. If the incoming DO is not filled through this process, it would be displayed on the book at \$20.00 along with other quotes/orders at that price.

DOs on the book would interact with incoming orders in the following manner. Market orders would execute against or be delivered to a DO's displayed price if it is at the inside market, with the DO's discretionary price range not taken into consideration. Incoming limit orders and DOs that are marketable against the best bid/best offer would likewise execute against or be delivered to a DO with a displayed price at the inside market. Incoming

limit orders with prices that fall within the discretionary ranges of DOs may be executed by DOs, with the execution occurring at the price of the incoming order, if there are no displayed Quotes/Orders at that price or better.⁷ Similarly, incoming DOs whose discretionary price ranges overlap with the discretionary price ranges of resting DOs would execute at the price most beneficial to the resting order. Thus, if the best bid was \$20.00, and a DO to buy at \$20.00 with discretion up to \$20.02 was on the book, the DO could interact with (i) a market order (at \$20.00), (ii) a marketable limit order or DO (at \$20.00), (iii) a limit order priced at \$20.01 or \$20.02 (at the price of the limit order), or (iv) a DO with a discretionary price of \$20.01 and/or \$20.02, at the lowest overlapping price. For purposes of determining execution priority, the price priority of a displayed DO would be based on its displayed price when it may be executed at its displayed price.⁸ When displayed DOs may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another would be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not DOs will be based upon the price at which they are executable.⁹

If a new quote/order would interact with a resting DO's discretionary price(s), SuperMontage would immediately execute the overlapping portion of the newly-entered quote/order. Thus, if the best bid was \$20.00, the best offer was \$20.08, and a DO to buy at \$20.00 with discretion up to \$20.04 was on the book, a new offer at \$20.03 would be immediately executed against by the resting DO. If the new quote/order is entered by an NNMS Order-Delivery ECN, however, SuperMontage will instead deliver an order to the ECN for its acceptance.¹⁰

It should be noted that when SuperMontage matches an incoming Non-Directed Order or Quote/Order against a price in the discretionary price range of a DO submitted by an NNMS Order-Delivery ECN residing in the SuperMontage book, the resting DO would: (i) Automatically execute if the incoming order has been entered by an NNMS automatic execution participant, or (ii) be delivered if the incoming order has been entered by an NNMS Order-Delivery ECN. This is the case because the participant entering the incoming order would have no awareness of the

⁷ See Amendment No. 3, *supra* note 5.

⁸ See Amendment No. 1, *supra* note 3.

⁹ See Amendment No. 3, *supra* note 5.

¹⁰ *Id.*