

“SuperMontage”).⁵ Nasdaq implemented the revised fee schedule on December 1, 2003. The text of the proposed rule change appears below. New text is italicized.

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7000. CHARGES FOR SERVICES AND EQUIPMENT

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.	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share).
Directed Order	\$0.003 per share executed.
Non-Directed or Preferred Order entered by a member that accesses its own Quote/Order <i>submitted under the same or a different market participant identifier of the member.</i>	No charge.

Order Cancellation:

Non-Directed and Preferred Orders	No charge.
Directed Orders	\$0.10 per order cancelled.

(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 proposes to amend NASD Rule 7010(i) to modify the fee charged when multiple Quotes/Orders submitted by the same member under different MPIDs match and execute against each other in SuperMontage. Currently, Nasdaq does not charge a fee when a

member executes a trade against itself in SuperMontage and the Quotes/Orders are submitted under the same MPID (“single MPID execution”). However, when the same scenario occurs but the Quotes/Orders are submitted by a member under different MPIDs (“multiple MPID execution”), Nasdaq charges the standard SuperMontage execution fee that applies when trading interest of different members matches and executes.

Nasdaq proposes to amend NASD Rule 7010(i) so single MPID executions and multiple MPID executions are treated the same—there will be no charge. Therefore, Nasdaq proposes, beginning on December 1, 2003, that there will be no charge when a Non-Directed Order or Preferred Order submitted under one MPID of a member accesses the member's own Quote/Order submitted under a different MPID.⁶ Nasdaq states that its policy for not charging a fee when Quotes/Orders submitted by a member match and execute in SuperMontage is based on an expectation that, in its absence, members would internalize a greater percentage of orders through their own

proprietary systems, rather than exposing them to the full market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general and with Section 15A(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable fees among members. Nasdaq believes the proposal harmonizes its fee structure for trades that are “internalized” by members through SuperMontage, irrespective of whether the trade is the result of a single MPID execution or multiple MPID execution.

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.

⁵ “Quotes/Orders” is defined under NASD Rule 4701(bb).

⁶ Non-Directed Order and Preferred Order are defined under NASD Rule 4701(p) and (aa), respectively.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(5).