

proposed rule change (SR-NASD-2002-180) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47344; File No. SR-NASD-2003-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, by the National Association of Securities Dealers, Inc. To Clarify Rule 4701(o) Regarding the Ability of UTP Exchanges To Enter Non-Attributable Quotes/Orders Into Nasdaq's SuperMontage System

February 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 17, 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") the proposed rule change as described in Items I, II, and III below, which items have been prepared by Nasdaq. On January 30, 2003, Nasdaq filed Amendment No. 1 to the proposal.³ On February 6, 2003, Nasdaq filed Amendment No. 2 to the proposal.⁴ The Commission is publishing this notice to solicit

comments on the proposed rule change, as amended, from interested persons.

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

The NASD proposes to amend NASD Rule 4701(o) to clarify the ability of UTP Exchanges to enter Non-Attributable Quotes/Orders into the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). The text of the proposed rule change is below.

Proposed new language is *italicized*.

4700. NASDAQ National Market Execution System (NNMS)

4701. Definitions—Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (n) No Change.

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility. *UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).*

(p) through (jj) No Change.

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

On July 1, 2002, Nasdaq filed SR-NASD-2002-91 with the Commission setting forth rules governing the entry of orders and quotes by UTP Exchanges into Nasdaq's SuperMontage system.⁵ As explained in that filing, UTP Exchanges that elect to participate in the system are allowed to enter a single bid Quote/Order and a single offer Quote/Order representing their principal

trading interest that will displayed along with the UTP Exchange's identifier in the Nasdaq Quotation Montage. If that Attributed Quote/Order falls with the number of price levels subject to aggregation, that UTP Quote/Order will be included in the total aggregated share amounts displayed by the system. For their agency Quotes/Orders, UTP Exchanges that elect to participate in SuperMontage can send one, or multiple, Non-Attributable Quote/Orders to the system. These Quotes/Orders will be displayed under SuperMontage's SIZE MMID. In order to make clear the ability of participating UTP Exchanges to enter Non-Attributable Quotes/Orders for their agency customers, Nasdaq proposes to amend the definition of Non-Attributable Quote/Order in NASD Rule 4701(o) to reference NASD Rule 4710(e) that authorizes and governs UTP Exchange capabilities in SuperMontage.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁶ in general, and with section 15A(b)(6) of the Act,⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

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

Nasdaq believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Nasdaq has not solicited nor received any written comments with respect to the proposed rule change.

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

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 30, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq provided a basis for waiving the 30-day operative delay.

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 6, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq amended the proposed rule change language for Rule 4701(o) to reflect changes approved by the Commission in Release No. 34-47301 (January 31, 2003), 68 FR 6236 (February 6, 2003). For the purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 6, 2003, the date Nasdaq filed Amendment No. 2.

⁵ See Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (File No. SR-NASD-2002-91 regarding the voluntary participation of national securities exchanges in the SuperMontage).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).