

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 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

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, the rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁸ and Rule 19b-4(f)(1) thereunder.⁹

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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2002-78 should be submitted by August 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46260; File No. SR-NASD-2002-67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of References to the Term "Agency Quote" From the Rules of the Nasdaq National Market Execution System and the Nasdaq Order Display Facility

July 25, 2002.

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 May 28, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to 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 July 12, 2002, Nasdaq filed Amendment No. 1 to the proposal.³ On July 24, 2002,

¹¹ 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 July 11, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made corrections to its proposed rule text which replaced the rule text in the original filing entirely and added a footnote in its discussion to clarify that this filing would remove language from Nasdaq rules referring to the "agency quote" concept that contemplated allowing market participants to represent agency trading interest via a quotation separate from that used for their proprietary trading. The rules retain, where appropriate, references to the term "agency" when used as a description of the capacity in which a market participant is acting on behalf of a customer order.

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 Substance of the Proposed Rule Change

Nasdaq proposes to eliminate all references to the term "agency quote" that are contained in the Nasdaq National Market Execution System and Nasdaq Order Display Facility (collectively "SuperMontage"). The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq, and at the Commission.

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 is proposing to eliminate all references to the term "agency quote" that are contained in the SuperMontage. On February 3, 1999, Nasdaq filed SR-NASD-99-09, in which Nasdaq proposed to implement a system to allow market makers to display customer limit orders under a separate market participant identifier.⁵ Colloquially known as the Agency Quote proposal, the Commission published the proposal for comment on March 2, 1999.

Separately, on October 1, 1999, Nasdaq filed to amend the Nasdaq National Market Execution System rules

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 24, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made corrections to its proposed rule text in NASD Rule 4701 and 4710. For purposes of calculating the 60-day abrogation period and the 30-day operative date, the Commission considers the period to have commenced on July 24, 2002, the date Nasdaq filed Amendment No. 2.

⁵ See Securities Exchange Act Release No. 41128 (March 2, 1999), 64 FR 12198 (March 11, 1999).

⁸ 15 U.S.C. 78s(b)(3)(A)(i).

⁹ 17 CFR 240.19b-4(f)(1).

¹⁰ The proposed rule change became effective on July 12, 2002, the date on which Amendment No. 1 was filed and, therefore, the 60 day abrogation period began on July 12, 2002.

to establish the SuperMontage.⁶ The proposed SuperMontage rules contained reference to the concept of Agency Quote, as rule filing SR–NASD–99–09 was pending before the Commission at the time Nasdaq filed the SuperMontage proposal. Among other things, the SuperMontage proposed to establish a mechanism for market participants to display customer limit orders under a separate Nasdaq market maker ID (“MMID”). On January 19, 2001, the Commission approved the SuperMontage proposal, and the related rules that contained references to the still-pending Agency Quote proposal.⁷ On December 31, 2001, Nasdaq withdrew the Agency Quote proposal as the SuperMontage provided equivalent functionality as an Agency Quote.⁸ The purpose of this rule filing is to eliminate all references to the concept of “Agency Quote” in the approved SuperMontage rules.

2. Statutory Basis

Nasdaq believes the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act⁹ in general, and with Section 15A(b)(6) of the Act¹⁰ in particular, in that the proposal 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.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in 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 neither solicited nor received any written comments with respect to the proposed rule change, as amended.

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

The foregoing proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change, as amended, has therefore become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b–4(f)(6) thereunder.¹² At any time within 60 days of the filing of this proposed rule change, as amended, 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.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, 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–2002–67 and should be submitted by August 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46265; File No. SR–OCC–2002–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Fixing Settlement Prices in the Event of Market Disruptions

July 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on May 17, 2002, The Options Clearing Corporation (“OCC”) 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would amend Article XII, Section 5 (relating to futures which include security futures) and Article XVII, Section 4 of OCC's by-laws (relating to index options) to provide OCC with the ability in the event of market disruptions to conform settlement prices for OCC-cleared security futures and index options to settlement prices that are used for related products (e.g., futures on the same index) not cleared by OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B),

⁶ See Securities Exchange Act Release No. 42166 (November 22, 1999), 64 FR 68125 (December 6, 1999).

⁷ See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

⁸ Nasdaq allows for market makers to submit multiple quotes/orders and, therefore, a separate agency quote is unnecessary. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Cyndi Nguyen, Attorney, Division, Commission, on July 19, 2002.

⁹ 15 U.S.C. 78o–3.

¹⁰ 15 U.S.C. 78o–3(b)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b–4(f)(6). Nasdaq has requested and the Commission has waived the usual five-day pre-filing notice requirement.

¹³ 17 CFR 240.19b–4(f)(6).

¹⁴ 17 CFR 200.30–3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).