15A(b)(6)[10] 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, 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 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

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1 and 2 are 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–2002–133 and should be submitted by November 12, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis for a 60-day pilot period to reduce the impact of grossly mis-priced or mis-sized quotes/orders.

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 and, in particular, with the requirements of section 15A(b)(6) of the Act,[11] 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.[12] The Commission believes that the establishment of a SuperMontage execution price governor pilot may prevent inadvertent executions significantly away from the inside market. The Commission also agrees with Nasdaq that this approach may act to balance the goals of rapid execution and price discovery while protecting market participants and the public investors they represent from excessive volatility and market confusion that can result from grossly mispriced/sized quotes/orders in an automated and linked trading environment.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the pilot will enable the Commission and Nasdaq to gain experience with the execution price governor before the Commission considers permanent approval of the pilot.[13] Furthermore, the Commission believes that granting accelerated approval to the proposed rule change and Amendment Nos. 1 and 2 would ensure that the execution price governor is in place for the start of the SuperMontage system roll-out scheduled for October 14, 2002.

Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act [14] to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act [15], that the proposed rule change, as amended, (File No. SR–NASD–2002–133) be, and it hereby is, approved until December 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] Approval of the 60-day pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[14] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46650; File No. SR–NASD–2002–142]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. To Establish an Execution Price Governor in SuperMontage

October 11, 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 October 9, 2002, 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 the NASD. The NASD amended its proposal on October 10, 2002.[3] 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

Nasdaq is filing a proposed rule change, as amended, to establish in SuperMontage a permanent execution price governor to prevent inadvertent executions significantly away from the inside market.

The text of the proposed rule change is below. Proposed new language is *italicized.*

* * * * *

[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 October 10, 2002 (''Amendment No. 1''). In Amendment No. 1, the NASD made minor technical corrections to the rule text.

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) No Change.

(ii) No Change.

(iii) No Change.

(B) Processing of Non-Directed Orders—No Change.

(i) through (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced Order shall be returned to the entering NNMS Market Participant.

(c) If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: 1) delivering an execution to a Quoting Market Participant(s) that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or 2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting $0.01. For example, in a stock with a current inside bid of $10.00, the maximum price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00 − ($10.00 × .10 e.g. $1) − $.01 = $8.99). For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding $0.01. For example, in a stock with a current inside offer of $10.00, the highest price at which a single sell order could be executed would be $11.01 calculated as follows: ($10.00 + ($10.00 × .10 e.g. $1) + $.01 = $11.01.

(C) Decrementation Procedures—No Change.

(i) through (iv) No Change.

(D) through (E) No Change.

(2) Refresh Functionality

(A) Reserve Size Refresh—No Change.

(B) Auto Quote Refresh (''AQR'')—No change.

(i) through (iv) No Change.

(3) through (8) No Change.

(c) through (f) 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's SuperMontage system allows the entry of individual orders of up to 999,999 shares in size and quotes of 99,900 shares. Once entered, SuperMontage immediately processes those quotes/orders against the quotes and orders of other market participants then residing in the system. If warranted by the price of the quote/order, and the trading interest on the other side of the market, the system automatically and continuously moves to inferior price levels until the entered quote/order is executed in full or until there is no longer any quotes or orders that would satisfy the terms of the quote/order.

While this processing dramatically increases the speed and efficiency of the Nasdaq market, in certain limited circumstances it may also have a material negative impact on market quality. This could occur when a very large market quote/order, or a marketable limit order priced significantly away from the inside, is entered into the system and quickly executes through numerous price levels and establishes a new inside wholly unrelated to previous trading activity in the security.[4] In turn, the resulting abnormal execution prices and quotes can create new historic high and/or low prices for the particular security at issue as well as potentially trigger the automatic execution of other customer orders in electronic systems that monitor the last sale and inside prices disseminated by Nasdaq.

In response, Nasdaq has determined to incorporate into SuperMontage a permanent execution price governor to reduce the impact of grossly mis-priced or mis-sized quotes/orders.[5] In short, SuperMontage will, using the formula outlined below, establish a maximum execution or break-point price a little over 10% away from a security's current inside price (for both the bid and offer side) and will execute a single quote/order only up to that price level, and reject the remaining unexecuted portion of the quote/order (if any) back to entering party for re-submission if desired. The following specific threshold formula is proposed:

- For incoming sell quotes/orders, the break price will be the current Inside Bid less 10% less $.01.[6]

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[4] Nasdaq's experience with similar orders in the SuperSoes environment indicates that the overwhelming majority of such quote/orders are not entered intentionally, but are generally simple mistakes in price or size terms made by entering party.

[5] Nasdaq separately filed a proposal, pursuant to Section 19(b)(2) of the Act, to establish the execution price governor on a 60-day pilot basis. *See* SR–NASD–2002–133.

[6] Values resulting from the application of the formula will not be taken into consideration beyond two decimal places. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission, October 10, 2002.

• For incoming buy quotes/orders, the break price will be the current Inside Offer plus 10% plus $.01.[7]

For example, in a stock with a current Inside Bid of $10.00, the maximum or break price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00 − ($10.00 × .10 *e.g.* $1) − $.01 = $8.99). In turn, this price determines how many shares of a particular quote/order can be executed based on the trading interest on the other side of the market residing in SuperMontage. For example, if the sell order discussed here was for 10,000 shares and there was only a total of 6,000 shares available between the current inside bid price of $10.00 and the threshold price of $8.99, SuperMontage would execute a total of 6,000 shares and reject the remaining 4,000 back to the entering party. Market participants receiving such a reject would be able to re-enter the rejected portion of their original order, if desired, with a new maximum break-point for that quote/order being calculated using the current inside price at the time of re-entry.

Nasdaq believes that the above approach best balances the goals of rapid execution and price discovery while protecting market participants, and the public investors they represent, from excessive volatility and market confusion that can result from the entry and execution of a grossly mis-priced or mis-sized quotes/orders in an automated and linked trading environment.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[8] in general and with Section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

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–2002–142 should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[7] When approving this formula, the Nasdaq Board of Directors also authorized the Chief Executive Officer of Nasdaq and/or the President of Nasdaq to alter the base percentages used in the threshold formula by 10% in either direction for a particular security or securities if its trading activity or share price warrants it. If Nasdaq Senior Management determines to alter this standard, Nasdaq will submit a proposed rule change to the Commission and alert market participants by posting the new percentages on NasdaqTrader.com. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, Division, Commission, October 10, 2002.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46645; File No. SR–NASD–2002–144]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Directed Orders in the Nasdaq Order Collection and Display Facility (''NNMS'' or ''SuperMontage'')

October 10, 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 October 9, 2002, 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. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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

Nasdaq is filing a proposed rule change to modify the Directed Order process in Nasdaq's future Order Display and Collector Facility (''SuperMontage''). The text of the proposed rule changes follows.

Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4706. Order Entry Parameters

(a) No Change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).