

Trade-or-Move Directed Order.¹¹ The Commission concluded previously that the procedures in NASD Rule 11890 promote the fair and efficient resolution of disputes involving clearly erroneous transactions.¹² Similarly, the Commission believes that the procedures in NASD Rule 11890 will provide a fair and efficient means for addressing a double execution resulting from the execution of a market participant's Trade-or-Move Directed Order and an execution against that market participant's locking/crossing quotation during the SuperMontage opening process.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission finds that the proposal will contribute to an orderly opening by facilitating the effective interaction of the Trade-or-Move requirements and the SuperMontage opening process. The Commission finds that Amendment No. 1 clarifies the proposal by indicating that Nasdaq will declare null and void the execution of a Trade-or-Move Directed Order only after a member or UTP Exchange files a complaint regarding the execution, and by specifying that Nasdaq would declare null and void the execution of a Trade-or-Move Directed Order rather than an execution against a locking/crossing quotation during the SuperMontage opening process. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act,¹³ to approve the proposal, as amended, on an accelerated basis.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2002-123), as amended, is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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¹¹ As discussed more fully above, the proposal does not authorize Nasdaq on its own motion to declare null and void the execution of a Trade-or-Move Directed Order.

¹² See Securities Exchange Act Release No. 39550 (January 14, 1998), 63 FR 4333 (January 28, 1998) (order approving File No. SR-NASD-96-51).

¹³ 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46744; File No. SR-NASD-2002-150]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Pilot Nasdaq Transaction Services Pricing Package

October 30, 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 18, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

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

Nasdaq proposes to extend, through March 31, 2003, three components of the pilot Nasdaq Transaction Services pricing package currently in effect ("pricing pilot").³ The components of the pricing pilot extended by this proposal include: (1) The \$0.002 order execution fee for Nasdaq National Market Execution System ("NNMS" or "SuperSoes") orders; (2) the \$0.001 per share rebate for liquidity providers on SuperSoes executions; and (3) the \$0.01 quote update fee. Without such an extension, these pricing standards would terminate on October 31, 2002. The text of the proposed rule change is set forth below. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

7010. System Services

- (a)-(i)(1) No change.
- (i)(2) Nasdaq National Market Execution System (SuperSoes)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The pricing pilot components to be extended by this proposal were established by Securities Exchange Act Release No. 44910 (Oct. 5, 2001), 66 FR 52167 (Oct. 12, 2001) (SR-NASD-2001-67); No. 45342 (Jan. 28, 2002), 67 FR 5019 (Feb. 1, 2002) (SR-NASD-2001-96); and No. 45379 (Jan. 31, 2002), 67 FR 5867 (Feb. 7, 2002) (SR-NASD-2001-64 and SR-NASD-2001-68).

The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—\$0.10 per order entry (entering party only)
Per share Charge—\$0.001 per share executed for all fully or partially executed orders (entering party only)
Cancellation Fee—\$0.25 per order cancelled (canceling party only)⁴

For a pilot period commencing on November 1, 2001 and lasting until [October] March 31, 200[2]3, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only).

(3) No change.

(4) Liquidity Provider rebate

For a pilot period commencing on November 1, 2001 and lasting until [October] March 31, 200[2]3:

(A) No change.

(B) No change.

(5) Quotation Updates

(A) Except as provided in subparagraph (B), for a pilot period commencing on February 1, 2002 and lasting until [October] March 31, 200[2]3, a fee of \$0.01 per quotation update will be charged to NASD members that post quotations in the Nasdaq quotation montage. A "quotation update" includes any change to the price or size of a displayed quotation or reserve size.

(B) 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 extend to March 31, 2003, three components of the pricing pilot. The components of the

⁴ Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between Teri Nelson Jacoby, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division of Market Regulation, Commission, October 23, 2002.

pricing pilot extended by this proposal include: (1) The \$0.002 order execution fee for SuperSoes orders; (2) the \$0.001 per share rebate for liquidity providers on SuperSoes executions; and (3) the \$0.01 quote update fee. Without the extension, the pricing pilot will expire on October 31, 2002. Nasdaq represents that the pilot extension is needed in order to ensure pricing continuity throughout the rollout of SuperMontage,⁵ which will not be complete by October 31, 2002.

Beginning on October 5, 2001,⁶ Nasdaq instituted a pricing pilot program that increased the per share charge for the use of SuperSoes; and introduced a rebate to providers of liquidity in SuperSoes. Nasdaq represents that the program was introduced as part of Nasdaq's ongoing efforts to align the prices charged to market participants for using SuperSoes with the costs of providing services as well as the benefits provided to market participants. As a result of this program, the per share charge for orders entered and executed in SuperSoes increased from \$0.001 per share to \$0.002 per share.⁷ This increase was accompanied by the institution of a rebate designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through SuperSoes. Nasdaq represents that the rebate was also structured to address competitive disparities that existed between electronic communications networks that charge non-subscribers fees for accessing their quotes, and market makers that are generally prohibited by the SEC from charging fees.

Beginning February 1, 2002,⁸ Nasdaq instituted a quotation update fee applicable to NASD members of \$0.01 per quotation update. Nasdaq represents that the quotation update fee was introduced in recognition of the fact that the ability to post quotes in the Nasdaq quotation montage provides market participants with the valuable opportunity to advertise the liquidity

that they offer. In addition, by not charging for quotation updates, Nasdaq was allowing its participants to quote inefficiently. Nasdaq believes that the quotation update fee discouraged the practice of posting an excessive number of quote updates that resulted in very few executed trades, while still encouraging market makers to provide liquidity through the rebate program introduced in October 2001.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁹ in general and with sections 15A(b)(5) and 15A(b)(6) of the Act.¹⁰ Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility of system which the NASD operates or controls. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the proposed rule changes will ensure the fair and orderly operation of Nasdaq and the protection of investors by ensuring pricing continuity throughout the SuperMontage rollout.

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

Nasdaq believes that the proposed rule change will not 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 has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any

significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. 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.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest and therefore believes there is good cause to waive the five-day pre-filing notice requirement and to designate the proposal as immediately operative upon filing. The Commission notes that the proposal extends a current pilot program already in place. Acceleration of the operative date will allow the pilot to operate continuously through March 31, 2003. For these reasons, the Commission finds good cause to waive the five-day pre-filing notice requirement and to designate that the proposal become operative immediately upon filing.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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

⁵ On January 19, 2001, the Commission issued an order to approve a proposed rule change to establish SuperMontage, Nasdaq's new proprietary system for quote display and transaction execution. See Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001) (SR-NASD-99-53).

⁶ See Securities Exchange Act Release No. 44910 (Oct. 5, 2001), 66 FR 52167 (Oct. 12, 2001) (SR-NASD-2001-67).

⁷ The \$0.002 per share charge for non-members became effective in February 2002. See Securities Exchange Act Release No. 45379 (Jan. 31, 2002), 67 FR 5867 (Feb. 7, 2002) (SR-NASD-2001-64 and SR-NASD-2001-68).

⁸ See Securities Exchange Act Release No. 45342 (Jan. 28, 2002), 67 FR 5019 (Feb. 1, 2002) (SR-NASD-2001-96).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(5) and (6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to File No. SR-NASD-2002-150 and should be submitted by November 27, 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. 34-46747; File No. SR-NYSE-2002-57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through December 30, 2002, or Such Earlier Date as the NYSE's Pending Rule Proposal Requiring Shareholder Approval of Equity-Compensation Plans Is Approved by the Commission

October 30, 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 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Exchange proposes to extend until December 30, 2002, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans³ is

approved by the Commission, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.⁴ The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.⁵ The Pilot has since been extended until January 11, 2002,⁶ March 11, 2002,⁷ May 13, 2002,⁸ June 30, 2002,⁹ August 31, 2002,¹⁰ and October 30, 2002.¹¹

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

In its filing with the Commission, the Exchange 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. The Exchange 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

The Exchange has had the Pilot with respect to the definition of a "broadly-based" stock option plan since June 4, 1999.¹² On July 13, 2000, the Exchange filed a proposed rule change seeking to

⁴ See Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR-NYSE-98-32) ("Original Pilot Approval Order").

⁵ See Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR-NYSE-00-32).

⁶ See Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-37) ("2001 Extension Request").

⁷ See Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR-NYSE-2002-03).

⁸ See Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR-NYSE-2002-14).

⁹ See Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR-NYSE-2002-18).

¹⁰ See Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR-NYSE-2002-22).

¹¹ See Securities Exchange Act Release No. 46437 (August 29, 2002), 67 FR 57262 (September 9, 2002) (File No. SR-NYSE-2002-42).

¹² See Original Pilot Approval Order note 4 *supra*.

extend the effectiveness of the Pilot until September 30, 2003.¹³ Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.¹⁴ On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.¹⁵ The Exchange's 2001 Extension Request extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.¹⁶ The Pilot was again extended several times, most recently until October 30, 2002, for the same reasons.¹⁷

On October 7, 2002, in connection with the Exchange's corporate governance proposals, the Exchange filed a proposal with the Commission that would require shareholder approval for equity-compensation plans, making it unnecessary to continue the Pilot. That proposal was published in the **Federal Register** on October 11, 2002.¹⁸ As directed by the Commission staff, the Exchange is requesting an extension of the effectiveness of the Pilot until December 30, 2002, or until such earlier date as the Exchange's proposal relating to shareholder approval of equity-compensation plans is approved by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁹ which

¹³ See Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR-NYSE-00-32) ("2000 Extension Request").

¹⁴ See Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-04).

¹⁵ See note 5 *supra*.

¹⁶ See note 6 *supra*.

¹⁷ See notes 7 through 11 *supra*.

¹⁸ See note 3 *supra*.

¹⁹ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

¹⁶ 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (File No. SR-NYSE-2002-46).