

million. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 60.0 million shares to a low of 138.7 thousand shares. As of August 29, 2003, the aggregate market value of the 500 companies included in the Index represented approximately 77% of the aggregate market value of stocks included in the Standard & Poor's Stock Guidance Database of domestic common stocks traded in the U.S., excluding American depositary receipts, limited partnerships and mutual funds. Standard & Poor's chooses companies for inclusion in the Index with the aim of achieving a distribution by broad industry groupings that approximates the distribution of these groupings in the common stock population of the Standard & Poor's Stock Guide Database. Furthermore, as of August 29, 2003, ten main groups of companies comprise the Index with the percentage weight of the companies included in each group indicated in parentheses: Consumer Discretionary (11.4%), Consumer Staples (11.4%), Energy (5.8%), Financials (20.5%), Health Care (13.6%), Industrials (10.8%), Information Technology (17.4%), Materials (2.9%), Telecommunication Services (3.5%), and Utilities (2.8%).

Given the large diversification, capitalization, and relative percentage weightings of the companies included in each group of companies comprising the Index, the Commission continues to believe, as it has concluded previously, that the listing and trading of securities that are linked to the Index, should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the Commission also believes that the relative percentage weightings of the ten groups of companies comprising the Index should ensure that no one stock or group of stocks significantly minimize the potential for manipulation of the Index. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are with listed on Nasdaq, the NYSE, or the AMEX. In addition, Nasdaq's surveillance procedures should serve to deter as well as detect any potential manipulation.

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 the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow

investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.²⁴ Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,²⁵ to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASD-2003-155) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-27091 Filed 10-27-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48675; File No. SR-NASD-2003-143]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Establish a New "Auto-Ex" Order in Nasdaq's SuperMontage System

October 21, 2003.

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 September 24, 2003, 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 ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on October 3, 2003.³ Nasdaq

²⁴ See note 15, *supra*.

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

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 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 Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 2, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq amended the proposal to designate the proposed rule change as filed under

filed Amendment No. 2 to the proposed rule change on October 21, 2003.⁴ 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 establish a new "Auto-Ex" order in Nasdaq's National Market Execution System ("NNMS" or "SuperMontage"). Nasdaq intends to implement the proposed rule change as soon as possible following Commission approval and will inform market participants of the exact implementation date via a Head Trader alert on <http://www.nasdaqtrader.com>. The text of the proposed rule change appears below. New text is in *italics*; deletions are in brackets.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)-(jj) No change.

(kk) *The term "Auto-Ex" shall mean, for orders so designated, an order that will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.*

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

section 19(b)(2) rather than section 19(b)(3)(A) of the Act and replaced the original filing in its entirety.

⁴ See letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 21, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq amended the proposed rule text and clarified certain aspects of the proposed rule change which included, in part, stating that all Nasdaq market participants would be permitted to enter Auto-Ex orders and that Auto-Ex orders would access liquidity available at multiple price levels, but under no circumstances would the order "trade through" the Quote/Order of an Order-Delivery ECN (or an auto-ex participant that charged an access fee).

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel", or as a "Day" or a "Good-till-Cancelled" order. If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender. If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

An order may be designated as "Auto-Ex," in which case the order will also automatically be designated as IOC.

(C)-(F) No change.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms "In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order[-]Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may also designate orders as "Auto-Ex," in which case the order will also automatically be designated as IOC. For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes

non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) No change.

(b)-(e) No change.

* * * * *

4710. Participant Obligations in NNMS

(a) No change.

(b) Non-Directed Orders

(1) No change.

(A) No change.

(B) No change.

(i)-(iii) No change.

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

a.-c. No change.

d. *An Auto-Ex order will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS ("Auto-Ex Eligible Participants"). When processing an Auto-Ex order, however, the NNMS will not deliver an execution to an Auto-Ex Eligible Participant if the Quote/Order of an NNMS Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. An Auto-Ex order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.*

* * * * *

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 introduce a new SuperMontage order type, to be designated as the Auto-Ex order. The purpose of the order is to allow market participants to manage more precisely the timing of executing orders through SuperMontage. Accordingly, the order

will execute solely against the Quotes/Orders of SuperMontage participants that participate in the system's automatic execution functionality. According to Nasdaq, many market participants and their customers place a high value on the speed of order execution, especially in circumstances where the price of a security may be moving rapidly. SuperMontage's automatic execution functionality was designed to offer market participants a speed of execution that is as fast as technically feasible "on average, less than a second between order entry and order execution. However, in circumstances where a market participant values speed, it may be unable to receive the benefits of the system's efficiency if all or a portion of its order is delivered to an NNMS Order-Delivery ECN, which has up to 30 seconds to respond to the order (and which may respond by declining to fill the order).⁵ By contrast, many ECNs offer extremely rapid execution speeds to orders submitted to them directly. As a result, firms seeking rapid execution may avoid using SuperMontage and submit order directly to ECNs. The new order type will also allow an ECN subscriber that has submitted an order directly to an ECN to simultaneously access liquidity available from SuperMontage auto-ex participants without running the risk that its SuperMontage order will be delivered to the ECN to which it has already submitted an order.⁶

Nasdaq believes that its market participants should have the option of seeking rapid, automatic executions through SuperMontage, as well as through direct connections with ECNs. Accordingly, the proposed Auto-Ex order would be eligible for execution solely against the Quotes/Orders of automatic execution participants.⁷

⁵ In a prior filing, Nasdaq noted that the average response time of order-delivery ECNs is less than one second. See Securities Exchange Act Release No. 48078 (June 24, 2003), 68 FR 39171 (July 1, 2003) (SR-NASD-2003-72). See also Securities Exchange Act Release No. 48196 (July 17, 2003), 68 FR 43777 (July 21, 2003) (SR-NASD-2003-108). Nasdaq notes that the response time to particular orders may be far longer, however. In addition, in many instances an ECN responds by declining to execute an order delivered to it. In that case, a rapid response by the ECN does not translate into a rapid execution of the order delivered to it.

⁶ See Amendment No. 2, *supra* note 4.

⁷ To help market participants control the costs of automatic order execution, an automatic execution participant that charged a separate quote-access fee to participants accessing its Quotes/Orders through SuperMontage would also be ineligible to receive an execution of an Auto-Ex order. However, it should be noted that none of Nasdaq's current automatic execution participants charges a separate quote access fee. Thus, the order would execute

Auto-Ex orders will access liquidity available at multiple price levels, but under no circumstances would the order "trade through" the Quote/Order of an Order-Delivery ECN (or an auto-ex participant that charged an access fee). Thus, an Auto-Ex order would automatically be designated "Immediate or Cancel," and the order (or any unexecuted portion thereof) would be cancelled whenever the best price available through SuperMontage solely reflects the Quote/Order of a market participant that is not eligible to receive the Auto-Ex order. Nasdaq believes that this feature of the order will assist market participants using the order in fulfilling their obligations to obtain best execution for their customers, and will also encourage ECNs to continue to offer liquidity through SuperMontage. As is currently the case, NNMS order-delivery participants will be accessible through all other types of non-directed orders, as well as Preferred and Directed Orders. Auto-Ex orders may be either priced limit orders or market orders, and all market participants will be permitted to enter Auto-Ex orders.⁸

Nasdaq believes that the processing of the Auto-Ex order type will be similar to the processing of orders in Nasdaq's SuperSOES system, which was operational in 2001 and 2002.⁹ SuperSOES orders executed automatically against the quotes of market participants at the inside market that had agreed to accept automatic executions. The quotes of non-auto-ex market participants, however, were accessible only through Nasdaq's SelectNet system, which operated in a manner similar to the Directed Order functionality of SuperMontage. Nasdaq believes that the proposed Auto-Ex order is also closely aligned in function and purpose to the "fill-or-return" order offered by at least one of the national securities exchanges that trade Nasdaq stocks.¹⁰

At present, moreover, market participants can attempt to replicate the functionality of an Auto-Ex order by using a Preferred Order, which executes solely against the Quote/Order of a recipient identified by the participant entering the order, and only if the recipient is at the best bid/best

offer. Thus, a market participant seeking to access liquidity offered by an auto-ex participant at the inside market could prefer an order to that market participant. However, in circumstances where a market participant seeks to work a large order by accessing the Quotes/Orders of several auto-ex participants at the best bid/best offer, use of this option would require the use of several orders, and therefore a higher cost. The Auto-Ex order, by contrast, will allow SuperMontage participants to access liquidity at the inside market as quickly and economically as possible.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,¹¹ in general, and with section 15A(b)(6) of the Act,¹² in particular, in that it is designed 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. Nasdaq believes the proposed rule change would provide market participants with a voluntary tool to use on behalf of their customers when seeking to execute transactions as quickly as possible and at the lowest cost possible.

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. The new order type established by this proposed rule change will allow market participants that opt to use it to access available liquidity almost instantaneously, thereby achieving efficient executions at best available prices for their customers. However, the order will not trade through the Quote/Order of an NNMS order delivery participant (or an auto-ex ECN that charged an access fee), and order-delivery participants will continue to be accessible through all other types of non-directed orders, as well as Preferred and Directed Orders.¹³ As the Commission found when it determined that SuperSOES's

comparable order processing functionality was consistent with the Act, "it is not likely that ECNs that choose order entry participation will be marginalized because ECNs are frequently at the best quote in the market."¹⁴ Nasdaq believes that the processing functionality of the Auto-Ex order is no more likely to result in an inappropriate burden on competition than the processing functionality approved by the Commission in 2000.

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

Nasdaq neither solicited nor received written comments.

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 NASD 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 filings will also be available for inspection and copying at the principal office of the Association.

against the quotes of all of Nasdaq's current automatic execution participants, including the Chicago Stock Exchange.

⁸ See Amendment No. 2, *supra* note 4.

⁹ See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (SR-NASD-99-11); Securities Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844 (April 22, 1999) (SR-NASD-99-11).

¹⁰ See Pacific Exchange Rule 7.31(p) (describing "fill-or-return order" of the Archipelago Exchange facility of the Pacific Exchange, Inc.).

¹¹ 15 U.S.C. 78o-3.

¹² 15 U.S.C. 78o-3(b)(6).

¹³ See Amendment No. 2, *supra* note 4.

¹⁴ See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987, 3998 (January 25, 2000) (SR-NASD-99-11).

All submissions should refer to File No. SR-NASD-2003-143 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48671; File No. SR-NASD-2003-135]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. To Aggregate Odd-Lot Amounts in for Display in SuperMontage Under Certain Circumstances

October 21, 2003.

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 August 28, 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 October 20, 2003, the Commission received Amendment No. 1 to the proposed rule change.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 proposes to aggregate odd-lot share amounts inside the inside spread for display purposes via the SIZE MMID. Nasdaq will implement the proposed rule change effective December 8, 2003 with the exact start date to be provided to market participants via a Nasdaq Head Trader Alert. The text of the proposed rule

change is below. Proposed new language is in *italics*.

* * * * *

4707. Entry and Display of Quotes/Orders

(a) No Change.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quotes/Orders submitted to the system as follows:

(1) Through (2) No Change.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) No Change.

(B) *Aggregation and Display of Odd-lots Bettering the Inside Price—odd-lot share amounts that remain in system at prices that improve the best bid/offer in Nasdaq shall be subject to aggregation for display purposes, via the SIZE MMID, with the odd-lot share amounts of other NNMS Quoting Market Participants and NNMS Order Entry Firms at those same price level(s). Such odd-lots will be displayed via SIZE if 1) the combination of all such odd-lots at a particular price level is equal to, or more than, a round-lot and 2) that the price level represents either the highest bid or lowest offer price within the system. This aggregation shall display only the maximum round-lot portion of the total combined shares available at that best-priced level. This aggregation shall be for display purposes only and all individual odd-lot share amounts that are part of any such aggregation shall continue to be processed by the system based on the time-priority of their original entry.*

(c) Through (e) 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

Currently, the rules of the SuperMontage system provide that odd-lot share amounts of individual market participants are not displayed but otherwise generally remain in the system at their original price level and with the time-priority of their original entry. In some cases this may result in individual odd-lots being available at prices better than the displayed Nasdaq inside, but that are hidden from public view. In an attempt to increase transparency in the system in this situation, Nasdaq proposes in this filing to aggregate and display through SIZE the single best price level of any buy or sell odd-lots that are priced better than the Nasdaq inside market and that combined equal or are larger to or larger than one round-lot.⁴ This aggregation will be for display purposes only, each individual odd-lot that is added together and displayed will retain their individual execution priority in the system and will continue to be processed individually.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁵ in general and with Section 15A(b)(6) of the Act,⁶ 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 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.

⁴ Since the aggregation of odd-lots proposed here may involve the odd-lot quote/orders of more than one market participant, Nasdaq has determined to use the SIZE MMID to represent this combined trading interest. Though aggregated under SIZE, the firm identity of odd-lot attributed quote/orders that are thereafter executed will be provided to counterparties.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

¹⁵ 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 Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated October 17, 2003) ("Amendment No. 1"). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety.