

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*.

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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.

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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

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.

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 written comments on the proposed rule change.

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-2003-135 should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48627A; File No. SR-NASD-2003-130]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Amendments to Its Recently Adopted Rules Regarding Shareholder Approval for Stock Option or Purchase Plans or Other Equity Compensation Arrangements

October 22, 2003.

Correction

In FR Document No. 03-26588, beginning on page 60426 in the issue for Wednesday, October 22, 2003, the proposed rule text for proposed NASD Rule 4350(i)(1)(A)(iv) did not accurately reflect the current rule text of the rule being amended. Proposed NASD Rule 4350(i)(1)(A)(iv) should read as follows:

(iv) issuances to a person not previously an employee or director of the company, or following a bonafide period of non-employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's *independent* compensation committee [comprised of a majority of independent directors] or a majority of the issuer's independent directors. *Promptly following an issuance of any 2 employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48659; File No. SR-NYSE-2002-40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the New York Stock Exchange, Inc. To Establish Two New Crossing Sessions in the Exchange's Off-Hours Trading Facility

October 20, 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 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 14, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.³ On October 8, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.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

The New York Stock Exchange (the "Exchange") proposes to introduce into its rules "Crossing Session III," for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. In Amendment No. 1, the Exchange proposes to adopt a new Rule 907 to also add a "Crossing Session IV," whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price ("VWAP") for the subject security. Proposed Crossing Session III and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 13, 2003, and enclosure ("Amendment No. 1"). Amendment No. 1 proposes to add "Crossing Session IV."

⁴ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 7, 2003, and enclosure ("Amendment No. 2"). Amendment No. 2 deletes the reference to a volume-weighted average price ("VWAP") order from paragraph (c) of proposed Rule 907.

⁷ 17 CFR 200.30-3(a)(12).

¹ 17 CFR 200.30-3(a)(12).