

traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. Within 90 days of the hiring of any new Sub-Adviser, the Adviser will furnish the shareholders of the applicable Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this obligation, the Adviser will provide the shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act.

9. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49648; File No. SR-NASD-2004-067]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend NASD Rule 7010 to Modify the Charges Paid by Members Receiving Nasdaq's Service for Trading Exchange-Listed Securities

May 3, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 21, 2004, 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 has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Nasdaq under section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 proposes certain changes to Rule 7010 to modify the service charges paid by members for the Nasdaq service for trading exchange-listed securities. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].<sup>5</sup>

\* \* \* \* \*

#### 7010. System Services

(a) through (c) No change.  
(d) Computer Assisted Execution Service

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charge[s]  
[\$100 per month for each market maker terminal receiving CAES.] *\$200 per month per member receiving the service.*

(2) No change  
(e) through (u) 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The proposed rule change seeks to modify the monthly service charge paid by members receiving Nasdaq's Computer Assisted Execution System ("CAES") service<sup>6</sup> for trading exchange-

listed securities by replacing the monthly \$100 per terminal charge with a flat monthly fee of \$200 per member firm, regardless of the number of terminals used by such firm. Nasdaq believes that the proposed rule change will result in a more equitable allocation among members of the charges associated with this service. Nasdaq also believes that the overall decrease in fees for using this service should encourage greater use of Nasdaq in trading exchange-listed securities, and contribute to greater competition for executions of orders in New York Stock Exchange, Inc. and American Stock Exchange LLC-listed securities.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and Section 15A(b)(5) of the Act,<sup>8</sup> in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to market demands, Nasdaq believes that the proposed amendment supports the efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

##### 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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</sup>

"SuperMontage"). Telephone conversation between Alex Kogan, Office of General Counsel, Nasdaq, and Lisa N. Jones, Special Counsel, Division of Market Regulation ("Division"), Commission, on April 28, 2004.

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii)

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The proposed rule change is marked to show changes from the rule text in the NASD Manual available at <http://www.nasd.com>.

<sup>6</sup> CAES is the computer order routing and execution facility for ITS securities. The CAES functionality is offered through the Nasdaq National Market Execution System ("NNMS" or

thereunder, because it establishes or changes a due, fee, or other charge imposed by the NASD. 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 the furtherance of the purposes of the Act.

#### 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. Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-067 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-067. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-067 and

should be submitted on or before June 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-10560 Filed 5-7-04; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49650; File No. SR-NASD-2004-064]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Technical Corrections to SuperMontage Rules

May 4, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 15, 2004, 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 Nasdaq has prepared. Pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(3) thereunder,<sup>3</sup> Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization, which renders the rule effective upon the Commission's receipt of this filing. 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 proposes to make technical corrections to the rules governing the operation of the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 4700. Nasdaq National Market Execution System (NNMS)

\* \* \* \* \*

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(3).

#### 4701. Definitions

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

(a) through (ll) No Change.

(mm) The term "Pegged" shall mean, for *priced limit* orders so designated, that after entry into the NNMS, the price of the order is automatically adjusted by NNMS in response to changes in the Nasdaq inside bid or offer, as appropriate. [The price of a Pegged Order may be equal to the inside quote on the same side of the market (a Regular Pegged Order) or may be equal to a specified amount better than the inside quote on the contra side of the market (a Reverse Pegged Order).] *The NNMS Participant entering a Pegged Order may specify that the price of the order will either equal the inside quote on the same side of the market (a "Regular Pegged Order") or equal a price that deviates from the inside quote on the contra side of the market by \$0.01 (i.e., \$0.01 less than the inside offer or \$0.01 more than the inside bid) (a "Reverse Pegged Order").* The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be *permanently* converted into an unpegged limit order. Pegged Orders shall not be available for ITS Securities.

(nn) through (uu) No Change.

\* \* \* \* \*

#### 4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) No Change.

(2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) No Change.

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker [or] to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) No Change.

(b) through (c) No Change.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following: