serving their first term and their second term is scheduled to expire in January 2005 (''Group 2''). The second class is also composed of eight members. All of the members of the second class are serving their second consecutive term, which is scheduled to expire in January 2004 (''Group 3''). The remaining two members of the Listing Council were appointed by the Board of Directors of Nasdaq earlier this year, one in May 2002 and the other in July 2002. Pursuant to Section 5.4(c) of the By-Laws of The Nasdaq Stock Market, these members' initial term will expire in January 2003 and they will then be eligible to serve two consecutive terms.

By extending the second term of most current members to three years, Nasdaq will be able to efficiently divide the Listing Council into three classes. Under this plan, the new first class will be composed of Group 1 and the second term of the members in this class will expire in January 2004. The new second class will be composed of Group 3 and the second term of the members in this class will expire in January 2005. Lastly, the new third class will be composed of Group 2 and the second term of the members in this class will expire in January 2006. The two remaining Listing Council members that were appointed earlier this year will be part of the new third class and they will be eligible to serve two three-year terms. Thus, these members' first term will expire in January 2006 and their second term will expire in January 2009.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general and with Section 15A(b)(6) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Specifically, Nasdaq believes the proposed rule change will provide greater continuity to the Listing Council, thereby allowing it to more efficiently address listing and policy matters that often involve investor protection issues.

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

Written comments were neither solicited nor received.

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) of the Act[8] and subparagraph (f)(3) of Rule 19b-4 thereunder,[9] because it is concerned solely with the administration of the Association. At any time within 60 days of the filing of the 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Association. All submissions should refer to file number SR–NASD–2002–105 and should be submitted by September 9, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20975 Filed 8–16–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46343; File No. SR–NASD–2002–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Voluntary Participation by National Securities Exchanges in the Nasdaq Order Collection Facility, Commonly Known as ''SuperMontage''

August 13, 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 July 1, 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, II, and III below, which Items have been prepared by Nasdaq. The proposed rule change, which Nasdaq filed pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] would clarify the terms and conditions upon which Nasdaq will grant access to SuperMontage to national securities exchanges that trade Nasdaq-listed securities on an unlisted trading privileges basis (''UTP Exchanges''). Nasdaq will make these rule changes effective upon the launch of SuperMontage.

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 NASD Rule 4710 regarding voluntary participation by national securities exchanges in the Nasdaq

[5] Nasdaq considers these two members to be part of the new third class as their service on the Listing Council will end at the expiration of their first term in January 2006 unless they are reappointed for a second term.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

[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).

Order Collection Facility, commonly known as ''SuperMontage.'' The proposed rule change would clarify the terms and conditions upon which Nasdaq will grant access to SuperMontage to UTP Exchanges.

Below is the text of the proposed rule change to the SuperMontage rules. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

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.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system[; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms]. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' Displayed Quotes/Orders and Reserve Size in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.

(i)–(iv) No Change.

(C) No Change.

(D) No Change.

(2) No Change.

(c)–(e) No Change.

(f) UTP Exchanges.

[Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange elects to participate in the system, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS:]

Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes.

A UTP Exchange may voluntarily participate in the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges, and complies with the terms of this subparagraph (f) of this rule. The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by the Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. Access to UTP Exchanges may be made available on terms that differ from the terms applicable to members but may not unreasonably discriminate among similarly-situated UTP Exchanges. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq.

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall [be permitted to] transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best five price levels in Nasdaq on either side of the market.

(B) UTP Exchange Agency Quotes/Orders.

(i) A UTP Exchange that elects to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders (''UTP Agency Order/Quote'').

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing—[(a)] UTP Exchanges that elect to participate in the system [and that agree to] *shall be required to* provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

[(b) UTP Exchanges that elect to participate in the system but that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept the delivery of an order up to the size of the UTP Exchange's Displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule. If such a UTP Exchange declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 30 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.]

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules—Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

* * * * *

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 currently anticipates that on July 29, 2002 it will begin operating SuperMontage, a proprietary automatic execution and order delivery system that will serve as a single point of entry into the Nasdaq market. As an independent market, Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, subject to SEC approval where necessary, Nasdaq is entitled to condition the manner in which it will voluntarily make its proprietary systems, including SuperMontage, available to UTP Exchanges that choose to use them. Likewise, participation in SuperMontage by an independent UTP Exchange is a voluntary action by that exchange. Therefore, each UTP Exchange can effectively negotiate at arms-length the terms, if any, according to which it will voluntarily participate in SuperMontage. Based upon these precepts, Nasdaq is modifying three aspects of its approved rules governing UTP Exchanges' voluntary participation in SuperMontage.

1. SuperMontage Will Not Access the Quotations of UTP Exchanges That Choose Not To Participate in SuperMontage

Nasdaq is permanently extending to SuperMontage a pilot rule, which specifies that if a UTP Exchange elects not to participate in SuperSOES,[5] SuperSOES will not include the UTP Exchange's quotation for order processing and execution purposes. The pilot rule first became effective, on October 31, 2001, and the pilot rule was extended on March 1, 2002 and May 31, 2002.[6] The language implementing this restriction is set forth in NASD Rule 4710(f) above, and it is identical to the current rule.

Establishing SuperMontage as the primary platform for trading Nasdaq-listed securities is a critical step in Nasdaq's long-standing goal to improve the quality of its market. Nasdaq believes that SuperMontage will dramatically increase the speed and efficiency of trading in the Nasdaq market, resulting in extremely fast executions and corresponding benefits to investors. If, however, a UTP Exchange chose to access Nasdaq but was not accessible for automatic executions through SuperMontage, there would be a potential for queuing in the system that could disrupt and slow the market. To improve the trading environment for all of Nasdaq's valued market participants, and to avoid potential significant market disruptions, we are amending SuperMontage rules to remove non-participating UTP Exchanges from the SuperMontage execution and order processing function.

UTP Exchanges that choose this option would submit their quotes directly to the securities information processor (''SIP''), not Nasdaq's market systems, and would be accessible by telephone as contemplated in the Nasdaq UTP Plan [7] or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.[8] Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

2. UTP Exchanges That Wish To Participate in SuperMontage Must Do So Via Automatic Execution

Nasdaq will also continue in a SuperMontage environment the requirement that UTP Exchanges that wish to participate in Nasdaq execution systems do so via automatic execution. The Commission approved this requirement with respect to Nasdaq's current execution systems, SuperSOES and the SelectNet Service.[9] This language implementing this requirement is contained in NASD Rule 4710(b)(1)(B) and 4710(f)(3). This language differs from the current rule, but the requirement will operate in SuperMontage precisely as it does today in SuperSOES and SelectNet.

Nasdaq favors this rule for a number of reasons. The volume and speed at which trading occurs in Nasdaq demands that all participants' quotes/orders be available for automated execution. Market participants demand and require the ability to access liquidity at the best prices virtually instantaneously. Nasdaq believes that SuperMontage will be a significant improvement over prior Nasdaq execution systems, and that it will provide market participants faster executions and higher fill rates. Although order delivery (previously offered through SelectNet)—which requires an affirmative response in order to consummate a trade—was adequate as the primary means of UTP Exchange access in the past, Nasdaq can no longer offer this functionality as an option to UTP Exchanges. Indeed, automatic execution has become the primary means of accessing market makers quotes in Nasdaq.

Participation in SuperMontage by UTP Exchanges is a voluntary action by each exchange. Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Therefore, it is entirely appropriate for Nasdaq to limit UTP Exchange access to

[5] ''SuperSOES'' is the commonly used term to describe Nasdaq's current Nasdaq National Market Execution System (''NNMS''). SuperMontage is, in effect, Nasdaq's successor to the NNMS.

[6] *See* Release Nos. 34–45047 (Nov. 8, 2001), 66 FR 57496 (Nov. 15, 2001); 34–45496 (March 1, 2002), 67 FR 10785 (Mar. 8, 2002); and 34–46016 (May 31, 2002), 67 FR 39457 (June 7, 2002).

[7] This is the method that the Cincinnati Stock Exchange uses for trading Nasdaq securities under the Nasdaq UTP Plan.

[8] This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of a NMS plan.

[9] *See* Release No. 34–45704 (Apr. 8, 2002), 67 FR 18278 (Apr. 15, 2002).

Nasdaq's most efficient system. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

3. UTP Exchanges That Choose To Use SuperMontage Must Execute an Agreement Governing the Terms of That Usage

Nasdaq hopes to enter into arms-length agreements with national securities exchanges governing their participation in SuperMontage, including the functionality and pricing involved. Nasdaq believes it is essential that all UTP Exchanges that use Nasdaq proprietary systems execute a contract defining the terms and conditions of such use, which may be different from the terms and conditions imposed on Nasdaq members.[10] It is essential for preserving the integrity of Nasdaq's proprietary systems that those self-regulatory organizations that use those systems agree to ensure that their members (over which Nasdaq typically has no direct authority) use them in a manner that is consistent with Nasdaq's systems requirements.

Similarly, Nasdaq will make SuperMontage available to UTP exchanges on the basis of contractually agreed charges for such use. Such charges may be different than the charges that Nasdaq members pay for SuperMontage, exactly as the Commission permitted Nasdaq to charge UTP exchanges more for access to ACT than Nasdaq charges its members.[11] Nasdaq participants have paid for the maintenance and development of Nasdaq execution systems, such as SuperMontage, over the course of more than two decades. Charging UTP exchanges or other non-members a higher rate than members for these services reflects the fact that the Nasdaq members have already borne the costs to build and enhance those services over time.

The fact that the charges are set through arms-length contract negotiations with UTP exchanges allows for the flexibility to address the myriad ways in which different UTP Exchanges may wish to voluntarily participate in SuperMontage. The ability to enter into separately negotiated contracts gives UTP Exchanges and Nasdaq the ability to tailor contracts to an exchange's specific needs and business model. The rule language, contained in NASD Rule 4710(f), is intended to expand the scope of functionality available to UTP Exchanges beyond that included in the approved rules. NASD Rule 4710(f) also sets out the minimum obligations of a UTP Exchange that wishes to participate in Nasdaq. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. While Nasdaq may make SuperMontage access available to UTP Exchanges on terms that differ from the terms applicable to members, Nasdaq is aware of its obligation to not unreasonably discriminate among similarly situated national securities exchanges.

2. Statutory Basis

Nasdaq believes that the proposed extension of this pilot is consistent with the provisions of Section 15A of the Act,[12] in general and with Section 15A(b)(6) of the Act,[13] in particular, in that the proposal is designed to facilitate 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. In particular, Nasdaq believes that modifying the manner in which UTP Exchanges voluntarily participate in SuperMontage is necessary for the fair and orderly operation of Nasdaq.

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.

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 with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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 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 No. SR–NASD–2002–91 and should be submitted by September 9, 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] Nasdaq does not impose a monthly fee for access to the UTP Interface. The UTP Interface is installed and maintained by an independent vendor.

[11] *See* Release No. 34–45702 (April 5, 2002); 67 FR 18279 (April 15, 2002) (approving SR–NASD–2002–35).

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).