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. 34–48078; File No. SR–NASD–2003–72]**

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Reduce the Non-Directed Order Maximum Response Time for Order-Delivery ECNs in Nasdaq's SuperMontage System

June 24, 2003.

On April 14, 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'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] to reduce, from 30 seconds to 7 seconds, the maximum time allowed for Nasdaq's National Market Execution System (''NNMS'') Order-Delivery Electronic Communications Networks (''Order-Delivery ECNs'') to respond to non-directed orders sent to them by Nasdaq's SuperMontage system (''SuperMontage''). On May 15, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published in the **Federal Register** on May 23, 2003.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the rules of an association promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Commission believes that, given Nasdaq's recent analysis of ECN responsiveness, which indicates that the average response-time across all ECNs participating in SuperMontage is less than one quarter of a second, reducing the maximum time period for Order-Delivery ECNs to respond to non-directed orders from 30 seconds to 7 seconds should give market participants a sufficient amount of time to respond to orders sent through SuperMontage.[7] Nasdaq noted that the current 30-second response time in some cases could inappropriately delay the processing of orders. The Commission believes that the 7-second maximum response time is appropriate to give ECNs ample time to execute non-directed orders sent to them, and to allow other market participants to more swiftly retrieve and execute orders originally dispatched to non-responsive ECNs, thereby helping Nasdaq to facilitate faster executions in SuperMontage. Further, the Commission notes that Nasdaq has represented that it will continue to monitor ECN responsiveness to delivered orders in SuperMontage and propose additional modifications if warranted.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2003–72), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2003 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 47883 (May 16, 2003), 68 FR 28312.

[5] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

[7] In its filing with the Commission, Nasdaq noted that the 30-second time period contained in the current rule resulted, in part, because of concerns raised by commenters in response to Nasdaq's proposal to implement SuperMontage. Nasdaq had originally proposed a 7-second response time, but commenters expressed concerns about past Nasdaq system issues related to the delivery of messages to market participants. Therefore, Nasdaq amended its proposal and extended the response time to thirty seconds. *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (approving SR-NASD–99–53). Nasdaq now represents that, based upon SuperMontage's performance to date, such concerns are no longer valid and a 7 second response time is appropriate.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48079; File No. SR–NASD–2003–94]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Rule 2210

June 24, 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 June 11, 2003, the National Association of Securities Dealers, Inc. (''NASD''), 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 NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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

NASD is proposing to amend NASD Rule 2210 to reinsert certain existing rule language that was inadvertently omitted from amendments to NASD Rule 2210 that the Commission recently approved. The text of the proposed rule change is available at the Office of the Secretary, NASD, and at the Commission.

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

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).