

Act of 1934 (15 U.S.C. 78n(a)). Rule 20a-1(b) requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for registered investment company proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that approximately 1,000 registered investment companies are required to file one proxy statement annually. The total annual reporting and recordkeeping burden of the collection of information is estimated to be approximately 106,200 hours (1,000 responses  $\times$  106.2 hours per response).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 28, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 46429; File No. SR-NASD-99-53]**

### Order With Respect to the Implementation of NASDAQ'S SuperMontage Facility

On January 19, 2001, the Commission conditionally approved a proposed rule change submitted by the National Association of Securities Dealers, Inc. (the "NASD"), on behalf of The Nasdaq Stock Market ("Nasdaq"), that would establish a new order display and collection facility for Nasdaq-listed securities ("SuperMontage").<sup>1</sup> To address the concerns expressed by several market participants that certain Commission rules would effectively make their participation in the SuperMontage mandatory,<sup>2</sup> the Commission conditioned its approval of the SuperMontage on the implementation of an alternative display facility ("ADF") by the NASD.

Specifically, the Commission conditioned its approval of the SuperMontage on the following, which must be implemented prior to or at the same time as the SuperMontage:

(1) That the NASD will offer a quote and trade reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSs, ECNs, and market makers;

(2) That NASD quotes disseminated through the exclusive securities information processor ("SIP") for Nasdaq-listed securities will identify the

ATS, ECN, or market maker source of the quote;<sup>3</sup> and

(3) That participation in SuperMontage will be entirely voluntary, because NASD quotes will be included in the Nasdaq quotation management system while Nasdaq is the exclusive SIP, but only for display purposes, and the NASD will provide access to its quotes on a market-neutral basis.<sup>4</sup>

On July 24, 2002, the Division of Market Regulation approved, pursuant to delegated authority, operation of the ADF as a pilot program for nine months.<sup>5</sup> The ADF pilot program permits registered market makers and registered ECNs to display their best-priced quotes or customer limit orders in Nasdaq-listed securities through the NASD. ADF market participants are required to provide other ADF market participants with direct electronic access to their quote, and to provide all other members of the NASD or a national securities exchange with the option to obtain direct electronic access or indirect electronic access through private linkages. The ADF also serves as a trade reporting and trade comparison facility. The ADF will therefore allow market participants to satisfy their order display and execution access obligations under the Order Handling Rules and Regulation ATS. The NASD staff has indicated that several ECNs have expressed an interest in fulfilling their quote display obligations through the ADF and are in varying stages of adapting their systems to participate in the ADF.<sup>6</sup>

<sup>3</sup> The Commission stated in the SuperMontage Approval Order that it would require Nasdaq and the exchanges trading Nasdaq securities on an unlisted trading privileges ("UTP") basis to renegotiate existing intermarket plans to provide for a new exclusive SIP or multiple non-exclusive SIPs for Nasdaq securities. The Commission further stated that if the revised plan provided for a new exclusive SIP, the operator of the new processor should not be a Plan participant except under certain conditions. SuperMontage Approval Order, 66 FR at 8052-55.

<sup>4</sup> *Id.*, 66 FR at 8053-54.

<sup>5</sup> Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). The NASD filed a proposal to establish an ADF on December 7, 2001. Exchange Act Release No. 45156 (December 14, 2001), 67 FR 388 (January 3, 2002). The NASD subsequently filed an amendment to the proposal on May 24, 2002, to respond to issues raised by commenters. Exchange Act Release No. 45991 (May 28, 2002), 67 FR 39476 (June 7, 2002).

<sup>6</sup> Market Participants are not required to use either the ADF or SuperMontage to quote or report trades. For instance, beginning the week of August 5, 2002, the Cincinnati Stock Exchange has provided Island ECN ("Island") with the ability to represent orders in certain Nasdaq securities in the national best bid or offer. As a result, Island has indicated that it may choose not to represent customer limit orders in SuperMontage. See Notice to Island Subscribers dated August 5, 2002,

<sup>1</sup> Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR-NASD-99-53) (the "SuperMontage Approval Order").

<sup>2</sup> Rules 11Ac1-1(c)(5) and 11Ac1-4 under the Securities Exchange Act of 1934 (the "Exchange Act") permit a market maker or specialist to place a better-priced proprietary or customer limit order with an electronic communications network ("ECN") anonymously without updating its public quote to reflect the better-priced order, as long as the ECN displays the order in the public market through a self-regulatory organization ("SRO") and provides equivalent access to such order. 17 CFR 240.11Ac1-1(c) and 240.11Ac1-4 (the "Order Handling Rules"). Regulation ATS requires alternative trading systems ("ATSs"), including ECNs, that trade 5% or more of the average daily trading volume in an exchange or Nasdaq-listed security to display and provide execution access to their quotes through an SRO. 17 CFR 242.301(b).

In addition, on July 1, 2002, Nasdaq launched a new technology platform (the "Internal SIP") on which Nasdaq will perform its duties as the exclusive SIP for the Nasdaq UTP Plan until a new securities information processor is chosen.<sup>7</sup> Quotation information provided by ADF market participants will be available through two Internal SIP feeds. The Internal SIP will disseminate the consolidated best bid and offer of the ADF, along with the best bid and offer of each UTP Exchange and Nasdaq market participant, through the UTP Quotation Data Feed. In addition, the Internal SIP will disseminate the individual quotations of each broker or dealer quoting in the NASD ADF via the OTC Montage Data Feed (OMDF).

Based on these developments, the Commission believes that participation in SuperMontage will be voluntary, because market makers, exchange specialists, ECNs and ATSS will have alternative venues in which to display their quotes, including the ADF.

Certain market participants have indicated that they are firmly committed to using the ADF as their order collection and display facility but require further time to adapt and test their systems to participate through the ADF. To prevent any unfairness, the Commission believes that SuperMontage should begin operation on October 11, 2002, assuming that within five business days from the entry of this Order, one or more market participants certifies, under oath, that such entity at the time of the oath intends to use ADF as its primary order collection and display facility for a significant portion of its business in Nasdaq securities, and provides a list of the Nasdaq securities for which it currently intends to post quotes on the ADF. In the absence of any such certification, SuperMontage shall become effective immediately after the fifth business day of the entry of this order. Accordingly, subject to the certification process, the Commission finds that the implementation of the ADF satisfies the conditions stated in the SuperMontage Approval Order. As referenced in Amendment No. 5 to the SuperMontage proposal, and consistent with subsequent conversations with the Commission staff, we understand that the NASD will roll out SuperMontage over a six-week period.

The Commission continues to review Nasdaq's pending application to register

as a national securities exchange. The entry of this Order does not address or resolve the issues presented in that application, does not make any findings with respect thereto, and does not suggest what, if any, future actions the Commission may take with regard to that application.

*By the Commission.*

Dated: August 29, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46425; File No. SR-NYSE-2002-24]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") August 28, 2002.

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 July 12, 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. The NYSE filed an amendment to the proposed rule change on August 16, 2002.<sup>3</sup> 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 proposal consists of the adoption of proposed amendments to NYSE Rule 342 ("Offices—Approval, Supervision and Control"). The proposed amendments would recognize the National Association of Securities Dealers' General Securities Principal Examination ("Series 24 Examination") as an acceptable qualification alternative to the General Securities Sales Supervisor Qualification Examination ("Series 9/10

Examination") for supervisory persons whose duties do not include the supervision of options or municipal securities sales activity. In addition, the amendments update and clarify certain provisions of the Rule.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

Rule 342. Offices—Approval, Supervision and Control

(a) through (d)—NO CHANGE—Inclusion of (d) below is for reference purposes only.

(d) Qualified persons acceptable to the Exchange shall be in charge of:

(1) Any office of a member or member organization,

(2) Any regional or other group of offices,

(3) Any sales department or activity.

(e) through Supplementary Material .12—NO CHANGE.

.13 Acceptability of supervisors. (a) Generally.—Any member, allied member or employee who is a candidate for acceptability under (d)(1), (2), or (3) above *must* [should] have a creditable *three year* record as a registered representative or equivalent experience, and [is expected to] *must* pass [either the Allied Member Examination or the Branch Office Manager Examination to qualify under (d)(1) or (2), or] *the General Securities Sales Supervisor Qualification Examination (Series 9/10) or another [an] examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities* [to supervise a specific sales department or activity to qualify under (d)(3)]. *The General Securities Principal Examination (Series 24), if taken and passed after July 1, 2001, is an acceptable alternative for persons whose duties do not include the supervision of options or municipal securities sales activity.* The examination requirement may be waived at the discretion of the Exchange. [Special examinations may be arranged for persons whose principal work is in unusual fields.]

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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, the Exchange 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

available at <http://island.com/prodserve/developers/resources/emailarchive/20020805.asp>.

<sup>7</sup> See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission (June 28, 2002).

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

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

<sup>3</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 15, 2002, and attachments ("Amendment No. 1").