

After the merger, FICC will satisfy the fair representation requirement of Section 17A of the Act⁵ by (i) continuing to give the members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division, the right to purchase shares of DTCC common stock on a basis that reflects their usage of the services of the Divisions, DTC, EMCC, and NSCC; (ii) continuing to allow members and participants receiving services from the Divisions to take part in the selection of individuals to be directors of DTCC (who will also be directors of FICC, DTC, EMCC, and NSCC) to ensure that all major constituencies in the securities industry will have a voice in the business and affairs of each of these companies; and (iii) utilizing the committee structure described above to ensure that the members and the participants receiving services from the Divisions will have a voice in the operations and affairs of the Divisions.

As a result of the merger, GSCC's Certificate of Incorporation and Bylaws will be amended to reflect the change of GSCC's name to FICC. The Rules of MBSCC will be adopted by FICC as the rules of the Mortgage-Backed Securities Division. The Rules of GSCC and MBSCC will be amended to reflect that (i) the Government Securities Division and the Mortgage-Backed Securities Division will be separate Divisions of FICC; (ii) neither Division of FICC will be liable for the obligations of the other Division; and (iii) the clearing fund and other assets of each Division will not be available to satisfy the obligations of the other Division.

III. Discussion

Section 17A(b)(3)(A) of the Act requires that a clearing agency be organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions.⁶ The purpose of the proposed merger of MBSCC into GSCC to form FICC is to eliminate the inefficiencies and inconsistencies that result from operating two fixed-income clearing corporations as separate entities. Accordingly, the Commission finds that FICC will be organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions first by ensuring the continued availability to GSCC members and MBSCC participants of safe and efficient clearing services which were previously

provided by GSCC and MBSCC and second by providing a means whereby uniform standards and clearance and settlement practices for various types of fixed-income products can be developed and implemented.

In the DTCC Integration, the Commission found that GSCC and MBSCC satisfied the requirements of section 17A(b)(3)(C) of the Act.⁷ Section 17A(b)(3)(C) requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.⁸ The merger of MBSCC into GSCC to create FICC will not affect the structure established by the DTCC Integration to assure fair representation of those who were GSCC members and MBSCC participants and are now Government Securities Division members and Mortgage-Backed Securities Division participants. Accordingly, the Commission finds that the proposed rule changes are also consistent with section 17A(b)(3)(C).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01) be and hereby are approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47011; File No. SR-NASD-2002-179]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Modify the Reserve Size Refresh Functional in Nasdaq's SuperMontage System

December 16, 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 December 16, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3) of the Act,³ and rule 19b-4(f)(6) thereunder,⁴ 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 to modify the way shares are refreshed from reserve size into displayed Quotes/Orders in Nasdaq's SuperMontage system. New text is italicized.

* * * * *

4710. Participant Obligations in NNMS

- (a) No Change.
- (b) Non Directed Orders.
- (1) No Change.
- (2) Refresh Functionality.

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to

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).

⁷ *Supra* note 3.

⁸ 15 U.S.C. 78q-1(b)(3)(C).

⁹ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78q-1(b)(3)(C).

⁶ 15 U.S.C. 78q-1(b)(3)(A).

refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the Nasdaq Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Nasdaq Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Nasdaq Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with NNMS Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) No Change.

(3) Through (8) No Change.

(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, SuperMontage allows Nasdaq Quoting Market Participants⁵ to use reserve size and select a round-lot refresh amount that the market participant wishes its quote/order to be refreshed to once its displayed size is reduced to less than a round-lot. Thus, once a quote or an order is decremented by executions to less than 100 shares, the system will refresh that quote/order from reserve size by the round-lot

amount designated by the market participant and combine it with any odd-lot share amount still remaining. For example, market maker A ("MMA") is displaying a 1000 share bid quote/order. MMA has 5000 shares in reserve and has selected a 400-share refresh size. Under current processing, Nasdaq states that if SuperMontage executed 925 shares against MMA's quote/order, the system would automatically take 400 shares from the 5000 in reserve and add it to the 75 shares remaining in MMA's quote/order for a total of 475 shares.⁶

Recently, Nasdaq states that some SuperMontage participants have raised concerns about the impact the above processing can have on their ability to manage quotes/orders so as to trade as often as possible in round-lot amounts. Because the combination of the odd-lot remainder trigger and the round-lot refresh amount almost always results in a new mixed-lot quote/order, these market participants generally can only return to displaying and having their quote represent an actual round-lot amount by either: (a) Having their mixed-lot quote/order interact with an odd or mixed-lot quote/order containing an odd-lot portion equal to that of their new displayed quote/order (e.g., a 475 share quote/order interacting with 375 or 75 share quote/order) or, (b) immediately canceling the mixed-lot quote/order and replacing it with a new round-lot thereby losing time priority for any previous odd-lot remainder.

In response to these concerns, Nasdaq proposes to modify SuperMontage's reserve size refresh function. Under the proposal, once a displayed quote/order has been reduced by executions to less than 100 shares, the system will automatically refresh that market participant's quote/order to the round-lot amount selected by the firm as its reserve size refresh amount. Using the previous example, once MMA's displayed size was reduced to 75 shares by the 925 share execution, SuperMontage would refresh MMA's quote/order by automatically adding 325 shares to create a 400 share round-lot—an amount exactly equal to MMA's selected reserve refresh amount.⁷ If the amount of shares in reserve for a

⁶ While these 475 shares would be treated as displayed trading interest for purposes of SuperMontage's execution algorithms, SuperMontage, which only displays round-lots, would show 400 shares next to MMA's firm identifier in the montage.

⁷ While displayed as a single round-lot quote, SuperMontage will continue to maintain separate time-stamps for the odd-lot remainders of the quote/order and the additional share amounts from reserve that together comprise the new updated round-lot displayed quote/order.

particular quote/order is insufficient to produce a displayable quote, the system will nonetheless combine and retain the reserve size and odd-lot remainders at the price level for potential execution in the system. If the amount of shares in reserve for a particular Nasdaq Quoting Market Participant's quote/order is insufficient to produce a displayable quote, the quote (including any reserve size share amounts) would be refreshed or updated pursuant to current SuperMontage programming and rules.⁸

Nasdaq believes that this approach will provide market participants with greater flexibility in managing their quotes/orders while continuing to ensure that small odd-lot and mixed-lot orders will be able to execute.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁹ in general and with section 15A(b)(6) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to 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 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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of rule 19b-4¹² thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on

⁸ See Securities Exchange Act Release No. 46141 (June 28, 2002), 67 FR 44906 (July 5, 2002); 46369 (August 16, 2002), 67 FR 54515 (August 22, 2002) (Approving File No. SR-NASD-2002-42).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq Quoting Market Participants consist of Nasdaq National Market System ("NNMS") Market Makers and NNMS Electronic Communication Systems ("ECNs").

which it was filed, or such shorter time as the Commission may designate. 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. Under Rule 19-4(f)(6) of the Act, a proposed rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq to respond quickly to the concerns of SuperMontage users and allow users to display actual round-lots as their quotes. For this reason, the Commission waives the 30-day operative delay and designates the proposal to be immediately effective and operative upon filing with the Commission.¹³

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 the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-179 and should be submitted by January 14, 2003.

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C.78c(f).

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. 34-46999; File No. SR-NASD-98-26 Amendment No. 13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Extension of Short Sale Rule and Continued Suspension of Primary Market Maker Standards Set Forth in NASD Rule 4612

December 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 December 13, 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 and II below, which Items have been prepared by the Nasdaq.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to extend the pilot program of the NASD short sale rule from December 15, 2002 until June 15, 2003. Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker ("PMM") standards currently set forth in NASD Rule 4162 also from December 15, 2002 until June 15, 2003. Finally, Nasdaq is proposing to modify the method used to calculate the bid tick indicator used by members to determine whether a short sale is permitted. The text of the proposed rule change is as follows. Additions are in italics; deletions are bracketed.

NASD Rule 3350

(a)

(b)(1) *With respect to trades executed on or reported to the ADF, [N]o member shall effect a short sale for the account*

of a customer or for its own account in a Nasdaq National Market security at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security.

(2) *With respect to trades executed on or reported to Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq National Market Execution System when the current best (inside) bid is below the preceding best (inside) bid in the security.*

(b)-(k) No Change.

(l) This section shall be in effect until June 15, 2003 [December 15, 2002].

IM-3350. Short Sale Rule

(a) No Change.

(b) (1) *With respect to trades executed on or reported to the ADF, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current national best (inside) bid when the current national best (inside) is below the preceding national best (inside) bid in the security. NASD has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.*

(2) *With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq National Market Execution System when the current best (inside) bid is below the preceding best (inside) bid in the security. Nasdaq has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.*

(c) No Change.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

²⁷ 17 CFR 240.19b-4.