

Act, to accelerate approval of Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Amendment No. 3 provides that TRACE fees will operate as a six-month pilot program. Conversion of the fee filing to a pilot program will enable the Commission to re-evaluate issues relating to consistency with the Act at the end of the pilot program and recommend any needed changes to the NASD at the end of that time.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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-2002-63 and should be submitted by July 26, 2002.

VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2002-63), as amended, be and hereby is approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46155; File No. SR-NASD-2002-92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Day and Good-Till-Cancelled Order Designations for Non-Directed Orders and Establishing Time Priority in Nasdaq's Future Order Display and Collector Facility ("NNMS" or "SuperMontage")

July 1, 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 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 establish "Good-till-Cancelled" ("GTC") and "Day" designations for Non-Directed Orders and clarify the processing of such orders when held in Nasdaq's future Order Display and Collector Facility ("NNMS" or "SuperMontage"). In addition, to clarify the SuperMontage capability to accept, retain, display, and execute orders at multiple price levels, Nasdaq also proposes to remove the term "marketable" from the text of Rule 4706(a)(1)(B). If approved, Nasdaq will implement this rule change within 30 days after successful completion of SuperMontage user acceptance testing.

Proposed new language is italicized and deleted text is bracketed.

4701. Definitions

(a) through (hh) No Change.
(ii) The term "Good-till-Cancelled" shall mean, for orders so designated, that if after entry into NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the

entering party, or until 1 year after entry, whichever comes first.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—
(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) No Change.
(B) A Non-Directed Order must be a market or [marketable] limit order, must be a round lot or a mixed lot, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and if entered by a Quoting Market Participant may be designated as "Immediate or Cancel"[, or as a "Day" or a "Good-till-Cancelled" order. If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4:00 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender. If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4:00 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

(C) through (E) No Change.

(F)(2) No Change.

(b) through (f) No Change.

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4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁹ 17 CFR 200.30-3(a)(12).

(1) No Change.

(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. *The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry.*

(i) through (iv) No Change.

(C) through (E) 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the proposal, SuperMontage will accept, retain, display, and execute orders at multiple price levels. The system will allow Quoting Market Participants³ to enter Non-Directed Orders and designate that those orders should be: (1) returned to them if they are not immediately executed (*i.e.*, an Immediate or Cancel or IOC order),⁴ (2) if not immediately executed or thereafter cancelled, held in the SuperMontage system for potential display and/or execution until the 4:00 p.m., Nasdaq market close, and then returned to them (*i.e.*, a Day order), or (3) if not immediately executed or thereafter cancelled, held in the SuperMontage system for potential display (if non-marketable) and/or execution for up to one year and then to be purged by Nasdaq (*i.e.*, a Good-till-Cancelled or GTC order).⁵ In this filing, Nasdaq seeks to establish both the GTC and Day order designations for Non-Directed Orders, and clarify for market participants how the time priority among those orders is established and how such orders will, or will not, be executed during the trading day.

a. Retention and Processing of Non-Directed Orders Designated as Day or GTC Orders

As currently contemplated, SuperMontage will have four distinct time periods over the course of the trading day: (1) the Pre-Market Session (7:30 to 9:29:29 Eastern Time), (2) the Pre-Open Unlocking/Uncrossing Process (9:29:30 a.m. to 9:29:59 Eastern Time),⁶ (3) Normal Market Day (9:30 a.m. to 4:00 p.m. Eastern Time), and (4) the After-Hours Session (4:00 to 6:30 p.m. Eastern Time).⁷ During these time periods, Non-

³ The term "Quoting Market Participants" refers to NNMS Market Makers, NNMS Electronic Communication Networks ("ECNs"), and Unlisted Trading Privilege Exchange Specialists. See Rule 4701(cc).

⁴ If no designation is selected by the entering party, SuperMontage will automatically designate such orders as IOC.

⁵ GTC orders that remain in the system for 1 year will be purged after the close on the anniversary date of their entry. If this anniversary date falls on a date when the Nasdaq market is closed, the order will be purged after the close on the next business day.

⁶ Nasdaq recently filed with the Commission a proposal seeking to establish a Pre-Open Unlocking/Uncrossing Process for SuperMontage. See Securities Exchange Act Release No. 45965 (May 20, 2002), 67 FR 36659 (May 28, 2002) (Notice of File No. NASD-2002-42).

⁷ Nasdaq will soon formally file with the Commission a proposal clarifying that the After-

Directed Orders that are designated Day or GTC will be processed as follows:

1. Pre-Market Session

The Pre-Market Session runs from 7:30:00 to 9:29:29 a.m. Eastern Time. During this time, users may enter and cancel GTC and Day Non-Directed Orders. Day Orders entered into the system in the pre-market period, or GTC orders entered into the system in the pre-market period or carried over from a previous day, though displayable, will not be available for execution until the Pre-Open Unlocking/Uncrossing Process set forth in proposed Rule 4710(b)(3)(B) commences at 9:29:30 a.m. Eastern Time, if approved by the Commission.⁸

2. Pre-Open Unlocking/Uncrossing Process

If approved, the Pre-Open Unlocking/Uncrossing Process will run from 9:29:30 to 9:29:59 Eastern Time.⁹ During the Pre-Market Unlocking/Uncrossing Process, GTC and Day orders will continue to be displayable and, starting at 9:29:30 a.m., be automatically executed if necessary to cure a locked/crossed market condition. Quotes and orders from automatic execution participants will receive execution reports, and SuperMontage delivery participants will have the execution delivered to them for acceptance, partial acceptance, or decline.¹⁰ Once this unlocking/uncrossing is completed, the system will resume processing incoming quotes, orders, and cancels until the 9:30 a.m. market open. If a Day or GTC order arrives during this period, it will be executed if it would lock or cross the market. If the new Day or GTC order does not lock/cross the market, it will be retained by SuperMontage for display and/or execution during the remainder of the trading day for Day orders and for GTC orders, and for GTC orders each day thereafter starting at 9:29:30 a.m. until the 4:00 p.m. normal market close.

3. Normal Market Session

The Normal Market Session runs from 9:30 a.m. to 4:00 p.m. Eastern Time. During this period Day and GTC orders may be entered by Quoting Market

Hours session in a SuperMontage environment will operate in a manner similar to Nasdaq's current after-hours program.

⁸ During the Pre-Market Session executions can only occur through the SuperMontage Directed Order process. Telephone conversation between Thomas Moran, Office of the General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on July 1, 2002.

⁹ See note 6, *supra*.

¹⁰ Once dispatched to an order delivery market participant, an execution/order may not be cancelled.

Participants at any time and will be retained by the system until they are executed or cancelled. Each GTC and Day order will, like all other representations of trading interest in SuperMontage, be individually time-stamped and executed if appropriate. Remainders of quote/orders reduced by execution, and retained by the system, will retain the time priority of their original entry.

4. After-Hours Session

If approved, the After-Hours Session in a SuperMontage environment will run from 4:00 p.m. (Market close) to 6:30 p.m. Eastern Time.¹¹ At market close, SuperMontage Non-Directed Order Processing ends for the day, and all Day orders expire and are returned to the entering party. GTC orders that have not been executed or cancelled will be retained by the system for the next trading session. Such orders will not, however, be available for execution in the after-hours session. During the after-hours session, Quoting Market Participants may continue to enter new GTC orders and cancel any previously entered GTC order. GTC orders are not displayed during the after-hours session. Day orders may not be entered during the after-hours session.

b. Time Priority in SuperMontage

The default priority for executing Non-Directed Orders in SuperMontage is price/time. As such, the system, unless requested otherwise by the party entering the Non-Directed Order,¹² will access the highest buy prices or the lowest sell prices residing in the system.¹³ Generally, among equally priced buying interest, or equally priced selling or market-priced interest, the system is programmed to automatically access the quotes/orders that were entered first into the system.¹⁴ This time priority attaches to a quote/order based upon the date and time it was entered into NNMS and remains until the quote/order is executed in full or it is cancelled by the entering party or by NNMS. The ability to execute against a particular quote/order will not impact

its time priority. For example, a GTC order entered at 7:45 a.m. is not executable, but such an order will have time priority over all other orders entered after that time. Similarly, that GTC order would retain its time priority over all other orders entered on days after that GTC order was entered into NNMS. In short, if NNMS allows the entry of the quote/order at a particular point in the trading day, the quote/order's time priority is established at that time.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹⁵ in general, and with Section 15A(b)(6) of the Act,¹⁶ in particular, in that the proposals are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.¹⁷

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 USC 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-2002-92 and should be submitted by July 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46143 ; File No. SR-NYSE-2002-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through August 31, 2002

June 28, 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 June 26,

¹⁷ Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day of publication in the **Federal Register**.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ See note 7, *supra*.

¹² A party entering a Non-Directed Order may also elect to have it order interact in the system on a price/time basis that takes into account access fees or on a price/size/time basis. See Rule 4710(b)(1)(B)(i), (ii) and (iii).

¹³ If a Non-Directed Order is entered by a NNMS Market Maker or ECN, NNMS will, before sending it to a Quoting Market Participant, first attempt to match the order off against the entering party's own quote/order, if that quote/order is at the best price in Nasdaq. See Rule 4710(b)(1)(B)(iv)(a).

¹⁴ Parties entering Non-Directed Orders also have an option to preference such orders to a particular market participant. See Rule 4710(b)(1)(B)(iv)(b).

¹⁵ 15 U.S.C. 78o-3.

¹⁶ 15 U.S.C. 78o-3(b)(6).