

Nasdaq believes that the pilot firms' agreement to provide valuable support to Nasdaq's effort in establishing infrastructure, testing, and support processes for TCP/IP lines using MQ Series will benefit all other firms that choose to make use of this software enhancement. Moreover, the fact that these firms continued to use x.25 CTCL lines after January 31, 2002 was attributable to delays on Nasdaq's part. Accordingly, Nasdaq believes that the pilot firms should receive a reduction in the charges assessed for x.25 CTCL after January 31, 2002. In accordance with guidance received from Commission staff, however, Nasdaq will provide a fee reduction not only to the MQ pilot firms, but also to all other members and non-members that used x.25 CTCL after January 31, 2002. The fee reduction will be provided by means of a credit that will appear on the bills mailed to subscribers in November 2002 (and/or a direct payment, to the extent that the amount of the credit exceeds the amount of charges).<sup>9</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>10</sup> including Section 15A(b)(5) of the Act,<sup>11</sup> which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,<sup>12</sup> which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

### *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

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)<sup>13</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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.<sup>15</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended 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 number SR-NASD-2002-96 and should be submitted by November 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-26516 Filed 10-17-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46648; File No. SR-NASD-2002-135]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperMontage Transactions in Low-Priced Securities**

October 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 2, 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 (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 caps on the SuperMontage order execution charges and liquidity provider credits applicable to Non-Directed and Preferred Orders for securities that are priced at \$1.00 or less per share. Nasdaq will begin implementation of the rule change in conjunction with the initiation of trading on SuperMontage (currently scheduled for October 14, 2002). Because the transition from the current SuperSOES, SOES, and SelectNet environment to SuperMontage will occur over the course of several weeks, with stocks moving from one system to the other in stages, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have

<sup>9</sup> Telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and Jennifer Colihan, Special Counsel, Division, Commission, October 9, 2002.

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 27, 2002, when Amendment No. 1 was filed.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

not transitioned, while charging the SuperMontage prices established through SR-NASD-2002-44,<sup>3</sup> SR-NASD-2002-91,<sup>4</sup> and SR-NASD-2002-135 for stocks that have transitioned. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act,<sup>5</sup> which renders the rule effective upon the Commission's receipt of this filing.

The text of the proposed rule change appears below. New text is in italics.

#### Rule 7010. System Services

(a)–(h) No change.

#### (i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

##### Order Entry

Non-Directed Orders (excluding Preferred Orders)—No charge.

Preferred Orders:

Preferred Orders that access a Quote/Order of the member that entered the Preferred Order)—No charge.

Other Preferred Orders—\$0.02 per order entry.

Directed Orders—\$0.10 per order entry.

##### Order Execution

Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:

Charge to member entering order—\$0.002 per share executed (*but no more than \$75 per trade for trades in securities executed at \$1.00 or less per share*).

Credit to member providing liquidity—\$0.001 per share executed (*but no more than \$37.50 per trade for trades in securities executed at \$1.00 or less per share*).

Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an

access fee to market participants accessing its Quotes/Orders through the NNMS—\$0.001 per share executed (*but no more than \$37.50 per trade for trades in securities executed at \$1.00 or less per share*).

Directed Order—\$0.0025 per share executed.

Non-Directed or Preferred Order entered by a member that accesses a Quote/Order of such member—No charge.

##### Order Cancellation

Non-Directed Orders (excluding Preferred Orders)—\$0.01 per order cancelled.

Preferred Orders—\$0.01 per order cancelled.

Directed Orders—\$0.10 per order cancelled.

##### Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants

Initial entry of Quote/Order—No charge.

Change of Quote/Order due to order execution through SuperMontage—No charge.

Cancel/replace of Quote/Order to increase size—No charge.

Cancel/replace of Quote/Order to change price—\$0.01.

Cancel/replace of Quote/Order to decrease size manually—\$0.01.

Cancellation of Quote/Order—\$0.01.

Cancellation of Quote/Order due to order purge or timeout—\$0.0075.

(j)–(s) 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, the 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

Earlier this year, Nasdaq filed a proposed rule change to control trading costs for low-priced securities traded through its SuperSOES transaction

execution system.<sup>6</sup> Specifically, SR-NASD-2002-106 established a maximum SuperSOES execution fee of \$75 per trade and a liquidity provider rebate cap of \$37.50 per trade for securities trading at \$1.00 or less per share. Nasdaq is now proposing to establish substantively identical limits for Non-Directed and Preferred Orders executed through SuperMontage.

Under the fee schedule established for SuperMontage by SR-NASD-2002-44, a member that enters a Non-Directed or Preferred Order will pay \$0.002 per share executed if the order is executed against the Quote/Order of a market participant that does not charge an access fee, and the liquidity provider will receive a \$0.001 credit. By contrast, the member will pay \$0.001 per share if the order is executed against the Quote/Order of a market participant that charges an access fee, and the liquidity provider will not receive a credit.<sup>7</sup>

Nasdaq represents that recent market activity has caused the prices of many Nasdaq securities to fluctuate, and in some cases lose significant value. As the prices of these securities decline, market participants generally need to purchase or sell an increasing number of total shares to participate actively in the market for these issues. This increase in the size of individual transactions, when combined with an unlimited per share fee and credit structure, will raise execution costs to market participants and result in disproportionate credits to liquidity providers.

In response, Nasdaq will establish caps on the order execution fees and liquidity provider credits for Non-Directed and Preferred Orders that execute at prices of \$1.00 or less. The maximum fee for such an order will be \$75 if the order is executed against the Quote/Order of a market participant that does not charge an access fee, and \$37.50 if the order is executed against the Quote/Order of a market participant that charges an access fee. Similarly, the maximum credit to a liquidity provider

<sup>3</sup> See Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR-NASD-2002-44). SR-NASD-2002-44 established a fee scheduled for members' use of SuperMontage.

<sup>4</sup> See Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (SR-NASD-2002-91). SR-NASD-2002-91 provided that the fees for the use of SuperMontage by a national securities exchange trading Nasdaq securities on an unlisted trading privileges basis ("UTP Exchange") may be established by means of an agreement between Nasdaq and the UTP Exchange.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> See Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR-NASD-2002-106). SR-NASD-2002-106 was effective upon filing. Nasdaq also filed with the Commission a proposed rule change to apply the fee and rebate limits established by SR-NASD-2002-106 retroactively, as of July 1, 2002. See SR-NASD-2002-107 (August 5, 2002).

<sup>7</sup> Nasdaq represents that the fee structure is economically identical to the current SuperSOES fee structure, under which a member pays \$0.002 per share executed but receives a \$0.001 rebate if its order executes against the quotation of a market participant that charges an access fee, and liquidity providers that do not charge an access fee receive a \$0.001 rebate.

for a transaction in a low-priced security would be \$37.50.<sup>8</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers, and other persons using any facility or system which the association operates or controls.

### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such 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 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-2002-135 and should be submitted by November 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-26626 Filed 10-17-02; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3453]

#### State of California

Santa Clara County and the contiguous counties of Alameda, San Mateo, San Joaquin, Stanislaus, San Benito, Santa Cruz and Merced in the State of California constitute a disaster area as a result of a wildfire that began on September 23, 2002 in the Santa Cruz Mountains. The wildfire consumed over 3,100 acres and damaged residences and businesses in the Croy Ridge and surrounding area. The wildfire was fully contained by October 5, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 9, 2002 and for economic injury until the close of business on July 10, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853-4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	6.625

<sup>13</sup> 17 CFR 200.30-3(a)(12).

	Percent
Homeowners without credit available elsewhere .....	3.312
Businesses with credit available elsewhere .....	7.000
Businesses and non-profit organizations without credit available elsewhere .....	3.500
Others (including non-profit organizations) with credit available elsewhere .....	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	3.500

The number assigned to this disaster for physical damage is 345305 and for economic damage is 9R9700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 2002.

**Hector V. Barreto,**  
Administrator.

[FR Doc. 02-26548 Filed 10-17-02; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3449; Amendment #1]

#### State of Louisiana

In accordance with a notice received from the Federal Emergency Management Agency, dated October 1, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 21, 2002, and continuing through October 1, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 26, 2002, and for economic injury the deadline is June 27, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 2002.

**Herbert L. Mitchell,**  
Associate Administrator for Disaster Assistance.

[FR Doc. 02-26547 Filed 10-17-02; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3366; Amendment #2]

#### Commonwealth of Virginia

The above-numbered declaration is hereby amended to extend the deadline

<sup>8</sup> Nasdaq represents that the caps are economically identical to the caps currently applicable to SuperSOES, under which a member could pay up to \$75 per trade but could receive a rebate of up to \$37.50 if its order executes against the quotation of a market participant that charges an access fee, while a liquidity provider that does not charge an access fee could receive a rebate of up to \$37.50.

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.