

an add-on service. CBOE members who rent trading floor terminals will be able to access the OpenBook data for an additional fee, set forth in the proposed amendments to Section 7(G)(10) of the Exchange Fee Schedule. Although CBOE will collect the fee for OpenBook access, all of the fee will be passed on to the quote vendor.⁵

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement of Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

CBOE has asserted that, because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2001-17 and should be submitted by June 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45906; File No. SR-NASD-2002-44]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Members' Fees for the Nasdaq National Market Execution System (SuperMontage)

May 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 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 ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 on April 8, 2002.¹ 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

This is a proposed rule change to establish prices for the future Nasdaq National Market Execution System (the "NNMS"), commonly referred to as "SuperMontage."² Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization, and therefore the proposed rule change is effective immediately upon filing. Nasdaq will implement the rule change within 30 days after successful completion of SuperMontage user acceptance testing. Because Nasdaq anticipates that 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 not transitioned, while charging the new SuperMontage prices for stocks that have transitioned.

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

* * * * *

7010. System Services

(a)-(h) No change.

[(i) Transaction Execution Services]

[(1) SelectNet Service]

[The following charges shall apply to the use of SelectNet:]

[Transaction Charge for Execution Resulting from Broadcast Message]. [\$2.50/side]

⁵ Telephone conversation between Christopher Hill, Legal Division, CBOE, and Michael Gaw, Division of Market Regulation, Commission, on May 9, 2002.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ The terms on Amendment No. 1 are incorporated in this notice. The Commission deems the abrogation period to expire 60 days after the amendment was filed.

² In current NASD rules, the term "Nasdaq National Market Execution System" refers to the transaction execution system commonly known as

"SuperSOES," but in the rules approved for SuperMontage, the same term refers to SuperMontage. As the SuperMontage system is introduced, the SuperMontage rules will replace current rules governing SuperSOES, SOES, and SelectNet.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

[Order Entry Charge]	[\$0.10 per order entry (entering party only)]
[Directed Non-Liability Order Execution Charge].	[\$0.90 per order execution (entering party only)]
[Directed Liability Order Execution Charge].	[\$0.90 per order execution for the first 25,000 orders executed monthly (entering party only)]
	[\$0.60 per order execution for the next 25,000 orders executed monthly (entering party only)]
	[\$0.10 per order execution for the next 200,000 orders executed monthly (entering party only)]
	[\$0.00 per order execution for all remaining orders executed monthly]
[Cancellation Fee]	[\$.25/ per order cancelled (canceling party only)]

[(2) Nasdaq National Market Execution System (SuperSOES)]

[The following charges shall apply to the use of the Nasdaq National Market Execution System:]

[Order Entry Charge]	[\$0.10 per order entry (entering party only)]
[Per Share Charge]	[\$0.001 per share executed for all fully or partially executed orders (entering party only)]
[Cancellation Fee]	[\$0.25 per order cancelled (canceling party only)]

[For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only).]

[(3) Small Order Execution System (SOES)]

[The following charges shall apply to the use of the Small Order Execution System:]

[Order Execution Charge]	[\$0.50 per order execution for the first 150,000 orders executed monthly (entering party only)]
	[\$0.30 per order execution for all remaining orders executed monthly (entering party only)]
[Cancellation Fee]	[\$0.25 per order cancelled (canceling party only)]

[(4) Liquidity provider rebate]

[For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002:]

[(A) NASD members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market

Execution System will receive a rebate of \$0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.]

[(B) NASD members will receive a rebate of \$0.001 per share when they

send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.]

[(5) Quotation Updates]

[(A) Except as provided in subparagraph (B), for a pilot period commencing on February 1, 2002 and lasting until October 31, 2002, a fee of \$0.01 per quotation update will be charged to NASD members that post quotations in the Nasdaq quotation montage. A "quotation update" includes

any change to the price or size of a displayed quotation or reserve size.]

[(B) A quotation update fee will not be charged for a change in the displayed quotation or reserve size that is performed automatically by the Nasdaq National Market Execution System ("NNMS") when an execution against the quotation occurs (other than a

change performed by the "Autoquote Refresh" functionality of the NNMS, for which a fee will be assessed).]

(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

<i>Non-Directed Orders (excluding Preferred Orders)</i>	<i>No charge</i>
<i>Preferred Orders:</i>	
<i> Preferred Orders that access a Quote/Order of the member that entered the Preferred Order)</i>	<i>No charge</i>
<i>Other Preferred Orders</i>	<i>\$0.02 per order entry</i>
<i>Directed Orders</i>	<i>\$0.10 per order entry</i>

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:

<i> Charge to member entering order</i>	<i>\$0.002 per share executed</i>
<i> Credit to member providing liquidity</i>	<i>\$0.001 per share executed</i>
<i>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.</i>	<i>\$0.001 per share executed</i>
<i>Directed Order</i>	<i>\$0.0025 per share executed</i>
<i>Non-Directed or Preferred Order entered by a member that accesses a Quote/Order of such member</i>	<i>No charge</i>

Order Cancellation

<i>Non-Directed Orders (excluding Preferred Orders)</i>	<i>\$0.01 per order cancelled</i>
<i>Preferred Orders</i>	<i>\$0.01 per order cancelled</i>
<i>Directed Orders</i>	<i>\$0.10 per order cancelled</i>

Entry and Maintenance of Quotes/Orders by NASDAQ Quoting Market Participants

<i>Initial entry of Quote/Order</i>	<i>No charge</i>
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<i>Change of Quote/Order due to order execution through SuperMontage</i>	<i>No charge</i>
<i>Cancel/replace of Quote/Order to increase size</i>	<i>No charge</i>
<i>Cancel/replace of Quote/Order to change price</i>	<i>\$0.01</i>
<i>Cancel/replace of Quote/Order to decrease size manually</i>	<i>\$0.01</i>
<i>Cancellation of Quote/Order</i>	<i>\$0.01</i>
<i>Cancellation of Quote/Order due to order purge or timeout</i>	<i>\$0.0075</i>

(j)–(q) 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 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 below in Sections A, B, and C, 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

On January 19, 2001, the Commission issued an order to approve a proposed rule change to establish SuperMontage, Nasdaq's new proprietary system for quote display and transaction execution.⁵ Nasdaq plans to commence operation of SuperMontage during the third quarter of 2002. In this filing, Nasdaq is establishing the prices to be charged to members for the use of SuperMontage.

Nasdaq represents that it has designed the pricing structure for SuperMontage with the goal of ensuring that the system offers market participants a deep pool of liquidity and rapid order execution. Accordingly, the entry of Non-Directed Orders (excluding Preferred Orders), the initial entry of a Quote/Order at a given price level, the cancel/replace of a Quote/Order to increase its size, and the change of a Quote/Order due to an execution through SuperMontage will all be free. Members will be charged \$0.02 per order entry for Preferred Orders and \$0.10 per order entry for Directed Orders. A fee of \$0.01 will be charged for each Non-Directed or Preferred Order that is cancelled, and a charge of \$0.10 will be assessed for the cancellation of a Directed Order.

As is the case in SuperSOES, order execution charges are assessed on a per share basis, with a credit being provided

to members that provide liquidity and do not charge an access fee. Specifically, Nasdaq will charge \$0.002 per share for the execution (in full or in part) of a 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 SuperMontage, and will provide a \$0.001 per share credit to a member that provides the liquidity for an execution and does not charge an access fee. Nasdaq represents that the purpose of the credit is to enhance competition between electronic communications networks ("ECNs"), which are permitted to charge fees for accessing their quotations, and market makers, which generally are prohibited from doing so.⁶ According to Nasdaq, the credit is not available to members that charge access fees for accessing their quotes through SuperMontage, because such market participants are already compensated for providing liquidity if their quote is executed against and an access fee is paid. Moreover, Nasdaq will charge only \$0.001 per share for the execution (in full or in part) of a Non-Directed or Preferred Order that accesses the Quote/Order of a market participant that charges an access fee, in order to offset, at least to some extent, the access fee.

The execution charge for a Directed Order is \$0.0025 per share. Finally, there will be no order entry or order execution charge for a Non-Directed or Preferred Order that is executed against a Quote/Order of the member that entered the Non-Directed or Preferred Order (*i.e.*, there will be no order entry or order execution charge for orders that are "internalized" through SuperMontage).

The current quotation update charge will be replaced by charges for the cancel/replace and cancellation of Quotes/Orders. Specifically, a fee of \$0.01 will be assessed for a cancel/

replace of a Quote/Order to change its price or to decrease its size manually. As noted above, a change to a Quote/Order that results from an order execution through SuperMontage, as well as a cancel/replace that increases the size of a Quote/Order, are free. A fee of \$0.01 will also be charged for the cancellation of a Quote/Order, unless the cancellation occurs automatically as the result of an order purge or timeout performed by SuperMontage, in which case the fee will only be \$0.0075.

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,⁷ which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, 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,⁸ which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the fees to be implemented by this filing are generally similar in structure and magnitude to Nasdaq's fees for its current quotation and execution systems. Moreover, in several instances, prices in SuperMontage are significantly lower than comparable prices in the current Nasdaq market. For example, the basic charge for order entry is eliminated in most cases, the charge for order cancellation is reduced from \$0.25 to \$0.01 for Non-Directed and Preferred Orders and to \$0.10 for Directed Orders, and the current quotation update charge is eliminated for Quotes/Orders that add liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁶ Compare Letter from Richard R. Lindsay, Director, Division of Market Regulation ("Division"), Commission, to Charles R. Hood, Senior Vice President and General Counsel, Instinet Corporation (Jan. 17, 1997) (acknowledging ECN access fee of up to \$0.015 per share) with Letter from Robert L.D. Colby, Deputy Director, Division, Commission, to M. Joseph Messina, Vice President, M.H. Meyerson & Co., Inc. (May 5, 1998) (interpreting SEC Rule 11Ac1-1 to prohibit market makers from charging fees for access to their public quotes).

⁵ See Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001) (SR-NASD-99-53).

⁷ 15 U.S.C. 78o-3(b)(5).

⁸ 15 U.S.C. 78o-3(b)(6).

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 on the proposed rule change contained in this filing.

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 Act⁹ and subparagraph (f) of Rule 19b-4,¹⁰ thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 NASD. All submissions should refer to file number SR-NASD-2002-44 and should be submitted by June 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45908; File No. SR-NASD-2002-21; SR-NYSE-2002-09]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Research Analyst Conflicts of Interest

May 10, 2002.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² on February 13, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASDR"), and on February 27, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes relating to research analyst conflicts of interest. On March 7, 2002, NASDR submitted Amendment No. 1 ("NASD Amendment No. 1") to its proposed rule change.³ The proposed rule changes, as amended,

were published for comment in the **Federal Register** on March 14, 2002.⁴

On April 2, 2002, the Commission extended the comment period until April 18, 2002.⁵ The Commission received 55 comment letters on the proposed rule changes from 52 different commenters.⁶ On April 30, 2002, the

⁴ Release No. 34-45526 (March 8, 2002), 67 FR 11526 (March 14, 2002).

⁵ Release No. 34-45679 (April 2, 2002), 67 FR 11526 (April 4, 2002). In response to the solicitation of comments, the Commission received two requests to extend the comment period. *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Securities Industry Association, dated March 15, 2002; Pickard and Djinis LLP, dated March 28, 2002. In response to these requests, the Commission extended the comment period from April 4, 2002 until April 18, 2002.

⁶ *See* Letters to Jonathan G. Katz, Secretary, Commission, as of the time that this order was prepared, from: The Alliance in Support of Independent Research, dated May 1, 2002 ("Alliance letter"); A.G. Edwards & Sons, Inc., dated April 17, 2002 ("A.G. Edwards letter"); American Bankers Association, ABA Securities Association, dated April 18, 2002 ("ABASA letter"); American Society of Corporate Secretaries, dated April 17, 2002 ("ASCS letter"); Association for Investment Management and Research, dated April 18, 2002 ("AIMR letter"); Ramesh Bodapati, dated March 4, 2002 ("Bodapati letter"); BBVA Securities Inc., dated March 22, 2002 ("BBVA letter"); Biotech Monthly, dated April 26, 2002 ("Biotech Monthly letter"); Charles Schwab & Co., Inc., dated April 18, 2002 ("Charles Schwab letter"); Cleary, Gottlieb, Steen & Hamilton, dated April 4, 2002 ("Cleary letter"); Credit Suisse First Boston, dated April 19, 2002 ("CSFB letter"); Davenport & Company LLC, dated April 17, 2002 ("Davenport letter"); Dorsey & Whitney LLP, dated April 18, 2002 ("Dorsey letter"); Edward Jones & Co., dated April 3, 2002 ("Edward Jones letter"); First Analysis Securities Corp., dated March 20, 2002 and First Analysis Securities Corp., dated April 17, 2002 (First Analysis letter"); Fried Frank Harris Shriver & Jacobson, dated April 18, 2002 ("Fried Frank letter"); Goldman Sachs, dated April 18, 2002 ("Goldman Sachs letter"); David Hauck, dated May 5, 2002 ("Hauck letter"); HSBC Securities (USA) Inc., dated April 4, 2002 ("HSBC letter"); Investment Company Institute, dated April 18, 2002 ("ICI letter"); Investment Counsel Association of America, dated April 23, 2002 ("ICAA letter"); Dan Jamieson, dated May 6, 2002 ("Jamieson letter"); Janney Montgomery Scott LLC, dated April 17, 2002 ("Janney Montgomery Scott letter"); Jefferies & Company, Inc., dated April 17, 2002 ("Jefferies & Co. letter"); Jovus, Inc., dated April 18, 2002 ("Jovus letter"); Legg Mason, Inc., dated April 17, 2002 ("Legg Mason letter"); Bruce Locke, dated February 8, 2002 ("Locke letter"); Congressman Edward J. Markey, dated May 7, 2002 ("Congressman Markey letter"); Merrill Lynch, Pierce, Fenner & Smith Incorporated, dated April 18, 2002 ("Merrill Lynch letter"); David Miller, dated April 26, 2002 ("Miller letter"); Morgan Lewis, dated April 18, 2002 ("Morgan Lewis letter"); Morgan Stanley, dated April 22, 2002 ("Morgan Stanley letter"); National Investor Relations Institute, dated April 15, 2002 ("NIRI letter"); New York State Bar Association Committee on Securities Regulation, dated April 17, 2002 ("NYSBA letter"); Nomura Securities International, Inc., dated March 19, 2002 ("Nomura letter"); North American Securities Administrators Association, Inc., dated April 18, 2002 ("NASAA letter"); Thomas Olsen, dated April 25, 2002 ("Olsen letter"); Pacific Growth Equities, Inc., dated April 18, 2002 ("Pacific Growth letter"); Pickard and Djinis LLP, dated March 28, 2002 and Pickard and

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (March 7, 2002) ("NASDR Amendment No. 1"). In Amendment No. 1, NASDR revised its response to Items 1(b) and 1(c) of the Form 19b-4 to indicate the impact that proposed NASD Rule 2711 would have on NASD Rule 2210. Additionally, NASDR inserted language in its Purpose section to clarify how the current disclosure requirements regarding securities recommendations in NASD Rule 2210 would apply if proposed NASD Rule 2711 was approved by the SEC. Finally, NASDR revised the provisions requiring disclosure of actual material conflicts of interest to conform its provisions to those of the NYSE.