

substantially similar to Chicago Board Options Exchange rule 6.15.<sup>3</sup>

## 2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>4</sup> in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for 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*

This proposed rule change does not impose 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*

The ISE has not solicited, and does not intend to solicit, comments in connection with this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

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

The ISE has designated the foregoing rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing. In addition, the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.<sup>5</sup> Accordingly, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and rule 19b-4(f)(6) thereunder.<sup>7</sup> 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 such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2003-09 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47530; File No. SR-NASD-2003-30]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify SuperMontage Fees for NNMS Order Entry Firms**

March 19, 2003.

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 March 3, 2003, the National Association of Securities Dealers, Inc. (“NASD”), 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 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>3</sup> and rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the rule effective upon Commission receipt of this filing. 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 the Substance of the Proposed Rule Change**

Nasdaq proposes to modify the fees paid by NNMS Order Entry Firms (“OE Firms”) for certain order executions through Nasdaq's SuperMontage system. Nasdaq will implement the rule change on the later of: (i) April 1, 2003; or (ii) the date on which Nasdaq implements a change to its SuperMontage system that inhibits automatic matching of OE Firms' orders, as described in SR-NASD-2002-173.<sup>5</sup>

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

\* \* \* \* \*

### **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:

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003) (SR-NASD-2002-173).

<sup>3</sup> See Securities Exchange Act Release No. 45817 (April 24, 2002), 67 FR 21785 (May 1, 2002) (SR-CBOE-2002-19).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> As required under Securities Exchange Act rule 19b-4(f)(6)(iii), the ISE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the

filing date or such shorter period as designated by the Commission. See Prefiling Notice of Proposed Rule Change (SR-ISE-2003-09), dated February 25, 2003.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

**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 .....	\$0.003 per share executed (but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share).
Credit to member providing liquidity .....	\$0.002 per share executed (but no more than \$80 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 \$40 per trade for trades in securities executed at \$1.00 or less per share).
Directed Order .....	\$0.003 per share executed.
Non-Directed or Preferred Order entered by a [member] <i>Nasdaq Quoting Market Participant</i> that accesses [a] <i>its own</i> Quote/Order [of such member].	No charge.
Non-Directed Order entered by an NNMS Order Entry Firm that accesses its own Quote/Order.	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share).

**Order Cancellation**

Non-Directed and Preferred Orders .....	No charge.
Directed Orders .....	\$0.10 per order cancelled.
(j)-(s) 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

On January 31, 2003, the Commission approved a proposed rule change to allow, on a 90-day pilot basis commencing February 10, 2003, OE Firms to enter non-marketable limit orders into SuperMontage using the SIZE Market Participant Identifier ("SIZE").<sup>6</sup> Since the inception of this

pilot program, Nasdaq has applied its pre-existing SuperMontage fee schedule to market activity associated with orders entered into SIZE by OE Firms. As a result of Nasdaq's recent decision to eliminate all of the fees that had formerly applied to the cancellation and modification of orders entered into SIZE,<sup>7</sup> OE Firms now have the opportunity to expose these orders to the market without charge.

In addition, under the SuperMontage fee schedule, OE Firms that enter orders into SIZE are eligible to receive the \$0.002 per share liquidity provider credit that market makers (and electronic communications networks ("ECNs")) that do not charge access fees receive when they provide liquidity to support order executions. Thus, when an order entered into SIZE by an OE Firm matches a non-directed order and an execution occurs, the market participant that entered the non-directed order will pay \$0.003 per share executed<sup>8</sup> and the OE Firm will receive a credit of \$0.002 per share.<sup>9</sup>

As described in the filing to implement the pilot program, OE Firms currently have their orders processed in

a manner similar to that of Quoting Market Participants, in that SuperMontage first attempts to match an OE Firm's non-directed orders with orders in SIZE from the same OE Firm. As is true for Quoting Market Participants, moreover, Nasdaq has not assessed a charge (or provided a liquidity provider credit) when an OE Firm's non-directed order executes against the OE Firm's own order in SIZE. Upon the implementation of an upcoming modification to SuperMontage, however, non-directed orders entered by an OE Firm will execute solely based on the algorithm selected by the OE Firm (price/time, price/time with fee consideration, or price/size).<sup>10</sup> Accordingly, although it is possible that an OE Firm's non-directed orders will be matched against its orders in SIZE, the system will no longer give an automatic preference to the OE Firm's orders in SIZE.

In light of this System modification, Nasdaq is proposing that an OE Firm entering a non-directed order that accesses a limit order that the OE Firm itself has posted in SIZE will pay \$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share). The \$0.001 per share fee is equivalent to the OE Firm paying the net of the \$0.003 order execution fee that it would pay to access the Quote/Order of a market

<sup>6</sup> *Id.* SIZE is the anonymous market participant identified ("MPID") that represents the aggregate size of all Non-Attributable Quotes and Orders entered by market participants in Nasdaq at a particular price level. Non-Attributable Quotes and Orders are not displayed in the Nasdaq Quotation Montage using the market participant's MPID. Instead, the SIZE MPID is displayed when the aggregate trading interest at a particular price level of such Non-Attributable Quotes and Orders falls within the number of levels (currently five)

authorized for aggregation and display on either side of the market.

<sup>7</sup> See Securities Exchange Act Release No. 47300 (January 31, 2003); 68 FR 6234 (February 6, 2003) (SR-NASD-2003-10). The entry of such orders has been free since the inception of the SuperMontage.

<sup>8</sup> Subject to a \$120 per trade cap for trades in securities executed at \$1.00 or less per share.

<sup>9</sup> Subject to an \$80 per trade cap for trades in securities executed at \$1.00 or less per share.

<sup>10</sup> Nasdaq expects to implement this system change on March 17, 2003.

maker and the \$0.002 credit that it would receive if its order in SIZE had been accessed by another market participant.<sup>11</sup>

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>12</sup> including section 15A(b)(5) of the Act,<sup>13</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.

### *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 establishes or changes a due, fee, or other charge and, therefore, has become effective immediately pursuant to section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and rule 19b-4(f)(2) thereunder.<sup>15</sup> 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.

<sup>11</sup> By contrast, when a market maker or ECN enters a non-directed or preferred order that accesses its own Quote/Order (*i.e.*, its proprietary quote, or a limit order that it has entered into SIZE or posted under its own MPID), it pays no order execution fee (but also receives no credit as a liquidity provider). Nasdaq believes that this added discount is an appropriate mechanism to ensure that market participants who undertake the burdens of continuous liquidity provision are provided benefits commensurate with their activities. Nasdaq also believes that the discount serves to encourage market makers and ECNs to enter orders into SuperMontage and thereby expose them to the full market, rather than internalizing them through their own proprietary crossing systems.

<sup>12</sup> 15 U.S.C. 78o-3.

<sup>13</sup> 15 U.S.C. 78o-3(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 19b-4(f)(2).

## 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 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-2003-30 and should be submitted by April 16, 2003.

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

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47539; File No. SR-NFA-2003-02]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rule 2-9 Concerning Ethics Training Requirements

March 19, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on March 6, 2003, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission

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

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On March 5, 2003, NFA submitted the proposed rule change to the CFTC for approval. The CFTC has not yet given such approval.

### I. Self-Regulatory Organization's Description of the Proposed Rule Change

The proposed rule change adopts a new Interpretive Notice to NFA Compliance Rule 2-9 Concerning Ethics Training Requirements. The Interpretive Notice expands on the CFTC's Statement of Acceptable Practices for ethics training and provides additional guidance to firms in meeting their ethics training obligations.

Section 15A(k) of the Act<sup>3</sup> makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under section 15(b)(11) of the Act.<sup>4</sup> Some of the firms that are affected by this rule change are broker-dealers registered under section 15(b)(11).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

During examinations of its Member firms, NFA asks for feedback on any areas in which Members may need more guidance. One of the areas that has recently required some clarification is ethics training. In 2001, the CFTC issued a Statement of Acceptable Practices ("Statement") for ethics training. This Statement was designed to allow flexibility in the format, frequency and providers of ethics training, giving each firm the freedom to tailor training to suit their own operations. Also, firms are no longer

<sup>3</sup> 15 U.S.C. 78o-3(k).

<sup>4</sup> 15 U.S.C. 78o(b)(11).