

450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-CBOE-2004-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-13 and should be submitted on or before May 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-9192 Filed 4-22-04; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49576; File No. SR-NASD-2004-048]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Create a Pilot Program Modifying SuperMontage Fees and Credits for Orders and Quotes Executed in the Nasdaq Closing Cross**

April 16, 2004.

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 16, 2004, the National Association of Securities Dealers, Inc. ("NASD"), 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, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change

as "establishing or changing a due, fee, or other charge" under Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 is filing this proposed rule change to waive, for a pilot period of three months, the Nasdaq National Market Execution System (commonly called SuperMontage) execution fees and credits for those quotes and orders executed in the Nasdaq Closing Cross. The pilot program will commence when Nasdaq implements the Closing Cross. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

\* \* \* \* \*

**Rule 7010. System Services**

(a)-(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

(1) 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: Average daily shares of liquidity provided through the NNMS by the member during the month:	
400,000 or less .....	\$0.003 per share executed (but no more than \$120 per trade for trades in securities executed at \$1.00 or less per share).
400,001 to 5,000,000 .....	\$0.0027 per share executed (but no more than \$108 per trade for trades in securities executed at \$1.00 or less per share).
5,000,001 or more .....	\$0.0025 per share executed (but no more than \$100 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:	
Charge to member entering order: Average daily shares of liquidity provided through the NNMS by the member during the month:	

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

<sup>15</sup> 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).

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

400,000 or less .....	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share).
400,001 or more .....	\$0.001 per share executed (but no more than \$40 per trade for trades in securities executed at \$1.00 or less per share, and no more than \$10,000 per month).
Directed Order .....	\$0.003 per share executed.
Non-Directed or Preferred Order entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member.	No charge.
Order Cancellation:	
Non-Directed and Preferred Orders .....	No charge.
Directed Orders .....	\$0.10 per order cancelled.

(2) For purposes of assessing NNMS fees and credits hereunder, (A) a Discretionary Order that executes prior to being displayed as a Quote/Order will always be deemed to be accessing liquidity unless it is executed by (or receives delivery of) a displayed Discretionary Order at a price in the discretionary price range of the displayed Discretionary Order, and (B) a Discretionary Order that executes after being displayed as a Quote/Order will always be deemed to be providing liquidity, unless the displayed Discretionary Order executes against (or is delivered to) a Quote/Order or Non-Directed Order that has not been designated "Immediate or Cancel," at a price in its discretionary price range.

### (3) Pilot-Closing Cross

*For a period of three months commencing on the date Nasdaq implements its Closing Cross (as described in Rule 4709) members shall not be charged SuperMontage execution fees, or receive SuperMontage liquidity provider credits, for those quotes and orders executed in the Nasdaq Closing Cross.*

(j)–(u) 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

The Commission recently approved the Nasdaq Closing Cross, which is a new process for determining the Nasdaq Official Closing Price for the most liquid Nasdaq stocks.<sup>5</sup> The Nasdaq Closing Cross is designed to create a more robust close that allows for price discovery, and an execution that results in an accurate, tradable closing price. Nasdaq is proposing a three-month pilot program during which there will be no SuperMontage execution charges, and no SuperMontage liquidity provider credits, for those quotes and orders executed as part of the Nasdaq Closing Cross. The pilot program would enable Nasdaq to evaluate more accurately the effectiveness of the Closing Cross in establishing the NOCP by eliminating any pricing disincentives that could arise as a result of a price schedule not established on the basis of actual trading data. During the pilot program, Nasdaq staff would study the behavior and participation in the Closing Cross to determine the optimum pricing schedule.<sup>6</sup>

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5),<sup>8</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 that NASD operates or controls. Nasdaq believes that the proposal to create the pilot program is

<sup>5</sup> See Securities Exchange Act Release No. 49406 (March 11, 2004), 69 FR 12879 (March 18, 2004) (SR–NASD–2003–173); see also Securities Exchange Act Release No. 49534 (April 7, 2004), 69 FR 19584 (April 13, 2004) (SR–NASD–2004–060), amending the Closing Cross.

<sup>6</sup> Nasdaq would consider extending the pilot if more information is needed at the end of the three-month period.

<sup>7</sup> 15 U.S.C. 78o–3.

<sup>8</sup> 15 U.S.C. 78o–3(b)(5).

an equitable allocation of fees because the program would apply equally to all members whose quotes and orders are executed as part of the Nasdaq Closing Cross. Furthermore, Nasdaq believes that the program is reasonable because it would allow Nasdaq, for a limited period of time, to analyze participation in the process and use the results to create an optimum fee schedule based on actual trading data.

### 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 proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>9</sup> and subparagraph (f)(2) of Rule 19b–4 thereunder,<sup>10</sup> because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate this proposed 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. Comments may be submitted by any of the following methods:

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b–4(f)(2).

*Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-048 on the subject line.

*Paper comments:*

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-048 and should be submitted on or before May 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-9274 Filed 4-22-04; 8:45 am]

**BILLING CODE 8010-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Intent To Rule on Request To Release Airport Property Owned by the Cities of Winfield and Arkansas City, Winfield, Kansas**

**AGENCY:** Federal Aviation Administration, (FAA), DOT.

**ACTION:** Notice of request to release airport property.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of approximately 400 acres of airport land located approximately 5 miles from the Strother Field Airport/Industrial Park under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

**DATES:** Comments must be received on or before May 24, 2004.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, ACE-600, 901 Locust, Kansas City, Missouri 64106-2325. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerald Hooley, Chairman, Strother Field Commission, at the following address: Strother Field Airport/Industrial Park, P.O. Box 747, Winfield, Kansas 67156.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Nicoletta S. Oliver, Airports Compliance Specialist, Federal Aviation Administration, Central Region, Airports Division, ACE-610C, 901 Locust, Kansas City, Missouri 64106-2325. The request to release property may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release property owned by the Cities of Winfield and Arkansas City, Winfield, Kansas, under the provisions of AIR21.

On April 8, 2004, the FAA determined that the request to release property owned by the Cities of Winfield and Arkansas City, Winfield, Kansas, submitted by the Strother Field Commission met the procedural requirements of the Federal Aviation Regulations, part 155.

The FAA will approve or disapprove the request, in whole or in part, no later than June 30, 2004.

The following is a brief overview of the request.

The Strother Field Commission requests the release of approximately 400 acres of airport property on the East

Auxiliary Site, which was acquired through the Surplus Property Act of 1944. This land is located approximately 5 miles from the airport and was used by the Army during World War II as an auxiliary landing site. Current use of the property is a farming operation. Because of the location of the land, the property is not involved in the current operation of the airport. The release of the property will allow for the sale of the land to generate revenue for use at the Strother Field Airport/Industrial Park. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may inspect the request, notice and other documents germane to the request in person at the Strother Field Airport/Industrial Park.

Issued in Kansas City, Missouri, on April 8, 2004.

**George A. Hendon,**

*Manager, Airports Division, Central Region.*

[FR Doc. 04-9195 Filed 4-22-04; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 10, 2003 [68 FR 63845].

**DATES:** Comments must be submitted on or before May 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Woods at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202-366-6206. By mail: NVS-122, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

<sup>11</sup> 17 CFR 200.30-3(a)(12).