

general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange believes that the proposed rule change will impose no burden on competition and, in fact, may enhance competition among markets and market makers to the benefit of investors. Modifying the Exchange's stabilization rules will eliminate regulatory restrictions on Amex specialists that are not imposed upon their market maker competitors. Thus, the Exchange believes that the proposed rule change actually will reduce competitive burdens rather than imposing them. The Exchange also believes that the revisions also will facilitate the ability of Amex specialists to provide prompt execution of customer orders. The Exchange notes that these enhancements at the Amex may create new incentives for market makers in other market centers to compete more aggressively with Amex specialists to provide better service, thus benefiting investors generally.

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

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.

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 such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-116 and should be submitted by December 16, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-29414 Filed 11-24-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48798; File No. SR-NASD-2003-150]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a "Pegged" Order in Nasdaq's SuperMontage System

November 17, 2003.

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 November 7, 2003, 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 ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ 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 proposes to establish a new voluntary order type, known as pegged orders, for use within the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). Nasdaq proposes to implement this new order type on or about December 8, 2003, and will inform market participants of the exact implementation date via a Head Trader Alert on <http://www.nasdaqtrader.com>.

The text of the proposed rule change appears below. New text is italicized.⁵

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)-(jj) No Change.

(kk)-(ll) Reserved.

(mm) The term "Pegged" shall mean, for priced limit orders so designated, that after entry into the NNMS, the price of the order is automatically adjusted by NNMS in response to changes in the Nasdaq inside bid or offer, as appropriate. The NNMS Participant entering a Pegged Order may specify that the price of the order will either equal the inside quote on the same side of the market (a "Regular Pegged Order") or equal a price that deviates from the inside quote on the contra side of the market by \$0.01 (i.e., \$0.01 less than the inside offer or \$0.01 more than the inside bid) (a "Reverse Pegged Order"). The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be

⁵ The Commission recently published for notice and public comment proposed rule changes filed by Nasdaq that propose to modify the rules governing the operation of SuperMontage. See Securities Exchange Act Release Nos. 48501 (September 17, 2003), 68 FR 56358 (September 30, 2003) (Notice of Filing of SR-NASD-2003-128); 48606 (October 8, 2003), 68 FR 59659 (October 16, 2003) (Notice of Filing of SR-NASD-2003-134); 48671 (October 21, 2003), 68 FR 61531 (October 28, 2003) (Notice of Filing of SR-NASD-2003-135); 48674 (October 21, 2003), 68 FR 61508 (October 28, 2003) (Notice of Filing of SR-NASD-2003-149); 48675 (October 21, 2003), 68 FR 61528 (October 28, 2003) (Notice of Filing of SR-NASD-2003-143). See also File No. SR-NASD-2003-165. The text of the proposed rule change is shown as marked against the text of the SuperMontage rules as currently in effect, rather than as they are proposed to be amended. Nasdaq represents that it will file such amendments to pending filings as Commission staff may request to reflect the approval, disapproval, immediate effectiveness, or withdrawal of filings.

²⁰ 17 CFR 200.30(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

permanently converted into an unpegged limit order.

* * * * *

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) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as an “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 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 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 (other than Pegged Orders) and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

In addition, an order may be assigned the designations described below. An order may be designated as “Pegged,” in which case the order will also automatically be designated as Day. A Pegged Order may not be designated as a Preferred Order. A Pegged Order (or

unexecuted portion thereof) will be retained by NNMS and its price adjusted in response to changes in the Nasdaq inside market. A Pegged Order will be cancelled if there is no displayable Quote/Order to which its price can be pegged. Starting at 7:30 a.m., until the 4 p.m. market close, Pegged 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. The initial price of Pegged Orders entered prior to market open will be established at 9:30 a.m. based on the Nasdaq inside bid or offer at that time.

To maintain the capacity and performance of the NNMS, Nasdaq may at any time suspend the entry of Pegged Orders for all securities or for any security. Pegged Orders that are in the NNMS at the time of such suspension will continue to be available for adjustment and execution.

(C)–(F) No Change.

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may designate orders as “Pegged,” in which case the order will also automatically be designated as Day. For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) No change.

(b)–(e) No change.

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS, and NNMS Order Entry Firms may enter Non-Attributable Quotes/Orders into the NNMS, subject to the following requirements and conditions:

(1) No change.

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-

stamp for the original quantity of the quote and assign a separate time-stamp to that size increase. When a Pegged Order is displayed as a Quote/Order, its time-stamp will be updated whenever its price is adjusted.

(3)–(4) No change.

(b)–(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

In order to provide increased functionality to system users, Nasdaq proposes to adopt a new order type, the pegged order, for use in SuperMontage. A pegged order is a limit order, the price of which is automatically adjusted to follow the price movements of the Nasdaq inside market. A “regular” pegged order would peg to the same side of the market it is entered on. Thus, the price of a regular pegged buy order would always equal the best inside bid in Nasdaq, and the price of a regular pegged sell order would always equal the best inside offer in Nasdaq. By entering a regular pegged order, a market participant indicates its willingness to provide liquidity at the best inside price set by other market participants.

A “reverse” pegged order would peg to the opposite side of the market. Specifically, it would peg at a price that deviates from the opposite side of the market by \$0.01.⁶ Thus, a reverse pegged buy order would be priced at \$0.01 less than the inside offer, and a reverse pegged sell order would be priced at \$0.01 more than the inside bid. By entering a reverse pegged order, a market participant indicates its willingness to provide liquidity at a price as close as possible to the opposite

⁶Nasdaq states that requiring the price of a reverse pegged order to deviate from the opposite side of the market would ensure that the price of the reverse pegged order would not lock or cross the Quote/Order to which it is pegged.

side of the market. As a result, in circumstances where the bid/ask spread is greater than \$0.01, the entry of a reverse pegged order would establish a new inside price. A pegged order may not be pegged to prices away from the inside market. Like any other order whose price is changed, a pegged order would be given a new time-priority stamp whenever a change to the inside bid/offer results in an adjustment of the price of a pegged order.

Users may voluntarily select a price execution cap beyond which a pegged order would not be executed. Once a price cap is reached, the pegged/reverse pegged order would be permanently converted to an unpegged limit order at the cap price and would be retained by the system for display and potential execution solely at that price or better; the price of a pegged order that is converted into an unpegged limit order would not thereafter be adjusted, even if the inside bid/offer is later in the range where pegging had previously been occurring. If no execution cap price amount is selected, SuperMontage would continue to adjust the price of the pegged order to follow the inside bid or offer to which it is pegged.

Pegged orders may only be entered as DAY orders. Pegged orders may be entered (but not displayed or executed) prior to market open. Because a pegged order reflects a NNMS participant's willingness to provide liquidity, pegged orders entered before market open would be added to the book and become available for interaction with other orders at 9:30 a.m. The price of pegged orders would be established at 9:30 a.m., based on the inside market at the open. Pegged orders may not be preferred or directed to another market participant.

A regular pegged order may not itself establish the inside bid or offer. Therefore, if all non-pegged displayable interest at the inside is exhausted, the new inside would be established at the next best price level where displayable non-pegged quotes/orders exist, and the price of pegged orders would be adjusted accordingly. If there are no other market participants on the same side of the market, a regular pegged order would be cancelled and sent back to the entering party.

Because the price of a reverse pegged order is based on changes on the opposite side of the market (e.g., a reverse pegged buy order's price is adjusted based on changes in the offer), such an order may remain alone at the inside. If there are no participants on the contra-side of the market, however, a reverse pegged order would be

cancelled and sent back to the entering party.

Because pegged orders would not allow a market participant to maintain a price that is away from the inside market, they are consistent with Nasdaq's "Autoquote Policy" reflected in NASD IM-4613. Pegged orders would allow all market participants to adjust the prices of orders in a manner similar to the practice of computer generated quoting described in NASD IM-4613(c), which is currently permitted on a case-by-case basis. Because of the potential negative impact that the automatic adjustment of quotes/orders can have on system capacity and performance, however, Nasdaq proposes to specifically retain the right to restrict or prohibit the entry of any type of pegged order entirely, or in a particular issue(s), at any time when SuperMontage is operational or available for the entry of such orders. Pegged or reverse pegged orders that are in the system at the time Nasdaq determines not to accept further such orders would continue to be normally adjusted and executed.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general and with Section 15A(b)(6) of the Act,⁸ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule change would provide market participants with a voluntary tool to use to offer liquidity at the inside market. Nasdaq notes that the Commission has found similar orders offered by at least one other market center to be consistent with the Act.⁹

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ See Securities Exchange Act Release No. 47467 (March 7, 2003), 68 FR 12134 (March 13, 2003) (SR-PCX-2002-75). According to Nasdaq, the Pegged Order proposed in this filing is almost identical in function to the Pacific Exchange Equities, Inc. ("PCXE") Pegged Order approved by the Commission.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,¹⁰ and subparagraph (f)(6) of Rule 19b-4,¹¹ thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File No. SR-NASD-2003-150 and should be submitted by December 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-29412 Filed 11-24-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48809; File No. SR-NASD-2003-167]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Raise ACT Fees for Users of the Query Function During the Trade Comparison Process

November 19, 2003.

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 November 14, 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 the proposed rule as one that establishes or changes a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act,³ which renders the rule effective upon the Commission’s receipt of the 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 Substance of the Proposed Rule Change

Nasdaq proposes to amend certain fees on its Automated Confirmation Transaction Service (“ACT”) and

implement the new fees on November 17, 2003. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets:

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

- (a)–(f) No change
- (g) Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:

Reporting of transactions executed through SuperMontage (or any other transaction execution system that makes use of SuperMontage’s functionality to report transactions) (“SuperMontage Transactions”).

Average daily volume of transaction reports for SuperMontage Transactions during the month to which a participant is a party:

0 to 9,999	\$0.029
10,000 or more	\$0.00

Other reports for transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT.

Reporting of all other transactions not subject to comparison through ACT. \$0.029/side

Comparison \$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)

Late Report—T+N \$0.288/side

Browse/query \$0.288/query [(Each ACT query incurs the \$0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than \$0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the \$0.288 query charge.)]

Terminal fee \$57.00/month (ACT only terminals)

CTCI fee \$575.00/month

WebLink ACT \$300/month (full functionality) or \$150/month (up to an average of twenty transactions per day each month) (For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.)

Risk Management Charges \$0.035/side and \$17.25/month per correspondent firm (maximum \$10,000/month per correspondent firm)

Corrective Transaction Charge \$0.25/Cancel, Error, Inhibit, Kill, or ‘No’ portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party[;]

ACT Workstation \$525/logon/month (A firm that uses ACT risk management through one or more NWII terminals when the ACT Workstation is introduced will be eligible to evaluate the ACT Workstation for a free, three-month trial period, provided that the firm continues to pay charges associated with its NWII terminal(s) during that period.)

¹² 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).