For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16520 Filed 6–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48078; File No. SR–NASD–2003–72]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Reduce the Non-Directed Order Maximum Response Time for Order-Delivery ECNs in Nasdaq's SuperMontage System

June 24, 2003.

On April 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'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] to reduce, from 30 seconds to 7 seconds, the maximum time allowed for Nasdaq's National Market Execution System (''NNMS'') Order-Delivery Electronic Communications Networks (''Order-Delivery ECNs'') to respond to non-directed orders sent to them by Nasdaq's SuperMontage system (''SuperMontage''). On May 15, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published in the **Federal Register** on May 23, 2003.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the rules of an association promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Commission believes that, given Nasdaq's recent analysis of ECN responsiveness, which indicates that the average response-time across all ECNs participating in SuperMontage is less than one quarter of a second, reducing the maximum time period for Order-Delivery ECNs to respond to non-directed orders from 30 seconds to 7 seconds should give market participants a sufficient amount of time to respond to orders sent through SuperMontage.[7] Nasdaq noted that the current 30-second response time in some cases could inappropriately delay the processing of orders. The Commission believes that the 7-second maximum response time is appropriate to give ECNs ample time to execute non-directed orders sent to them, and to allow other market participants to more swiftly retrieve and execute orders originally dispatched to non-responsive ECNs, thereby helping Nasdaq to facilitate faster executions in SuperMontage. Further, the Commission notes that Nasdaq has represented that it will continue to monitor ECN responsiveness to delivered orders in SuperMontage and propose additional modifications if warranted.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2003–72), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16519 Filed 6–30–03; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2003 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 47883 (May 16, 2003), 68 FR 28312.

[5] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

[7] In its filing with the Commission, Nasdaq noted that the 30-second time period contained in the current rule resulted, in part, because of concerns raised by commenters in response to Nasdaq's proposal to implement SuperMontage. Nasdaq had originally proposed a 7-second response time, but commenters expressed concerns about past Nasdaq system issues related to the delivery of messages to market participants. Therefore, Nasdaq amended its proposal and extended the response time to thirty seconds. *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (approving SR-NASD–99–53). Nasdaq now represents that, based upon SuperMontage's performance to date, such concerns are no longer valid and a 7 second response time is appropriate.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48079; File No. SR–NASD–2003–94]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Rule 2210

June 24, 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 June 11, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by 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

NASD is proposing to amend NASD Rule 2210 to reinsert certain existing rule language that was inadvertently omitted from amendments to NASD Rule 2210 that the Commission recently approved. The text of the proposed rule change is available at the Office of the Secretary, NASD, and at the Commission.

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

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

1. Purpose

On May 9, 2003, the Commission approved amendments to NASD Rule 2210 and the Interpretive Materials that follow NASD Rule 2210, and the creation of new NASD Rule 2211, all of which govern member communications with the public (the ''Advertising Modernization Rule Change'').[4] The Advertising Modernization Rule Change becomes effective on November 3, 2003. Among other things, the Advertising Modernization Rule Change revised paragraph (c) of NASD Rule 2210, which addresses member filing requirements and NASD review procedures for member communications with the public. However, the proposed rule filing failed to include current NASD Rule 2210(c)(3), which sets forth the filing and NASD review procedures for member sales literature that includes bond mutual fund volatility ratings.

The Advertising Modernization Rule Change was initially filed with the Commission on March 15, 2000, shortly after the Commission had approved the proposed rule change that included current NASD Rule 2210(c)(3).[5] Because of the close proximity of the Commission's approval of the bond mutual fund volatility rule and the initial filing of the Advertising Modernization Rule Change, the language of current NASD Rule 2210(c)(3) was inadvertently omitted from the Advertising Modernization Rule Filing. This omission of current NASD Rule 2210(c)(3) was unintentional, as NASD does not intend to rescind the NASD Rule 2210 provisions governing bond mutual fund volatility ratings.[6]

The purpose of this filing is to reinsert the language of current NASD Rule 2210(c)(3) concerning the filing and review requirements for member sales literature that contains bond mutual fund volatility ratings. The reinserted rule language is the same as the language used in current NASD Rule 2210(c)(3), other than certain minor, non-substantive changes. In this regard, the new language adds a heading prior to the paragraph, uses ''NASD'' rather than ''the Association'' to refer to NASD,[7] and clarifies that members must file sales literature that includes bond mutual fund volatility ratings at least 10 business days prior to the date of first use of the sales literature. These changes are consistent with changes made to other paragraphs of NASD Rule 2210 under the Advertising Modernization Rule Change. In addition, this rule filing renumbers paragraphs (c)(3) through (c)(9) as paragraphs (c)(4) through (c)(10), and corrects certain paragraph cross-references.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASD believes that reinserting the language of current Rule 2210(c)(3) that was inadvertently omitted from the Advertising Modernization Rule Change is consistent with the protection of investors and the public interest.

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

NASD Regulation believes that the proposed rule change would not 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 proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f)(6) of Rule 19b–4 thereunder.[10] Consequently, because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. However, this proposed rule change does not alter the November 3, 2003 effective date of the Advertising Modernization Proposed Rule Change that the Commission approved on May 9, 2003.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 proposal 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 the file number in the caption above and should be submitted by July 22, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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[4] *See* Securities Exchange Act Release No. 47820 (May 9, 2003), 68 FR 27116 (May 19, 2003) (SR–NASD–00–12).

[5] *See* Securities Exchange Act Release No. 42476 (February 29, 2000), 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

[6] In this regard, the Advertising Modernization Rule Change does not amend NASD Interpretive Material 2210–5, which governs members' use of bond mutual fund volatility ratings.

[7] NASD is in the process of amending NASD Rule 0120(j) to make clear that the term ''NASD'' refers collectively to NASD, NASD Regulation, Nasdaq, and NASD Dispute Resolution. *See* Amendment No. 1 to SR–NASD–2003–75.

[8] 8 15 U.S.C. 78o-3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).