

the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.<sup>27</sup> The Commission notes that the Exchange has represented that the ABS Securities will be listed in \$1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.<sup>28</sup>

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001-1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and

stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of \$100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market vendors such as Bloomberg, L.P., or through Web sites such as <http://www.investinbonds.com> (for Underlying Corporate Bonds) and <http://publicdebt.treas.gov> and <http://www.govpx.com> (for Treasury Securities and GSE Securities, respectively).

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other equity-linked instruments currently listed and traded on the Amex,<sup>29</sup> and other asset-backed securities currently listed and traded on the NYSE.<sup>30</sup> The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act<sup>31</sup> to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-Amex-2003-

25) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47885; File No. SR-Amex-2001-92]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Contrary Exercise Advices

May 16, 2003.

#### I. Introduction

On October 29, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to amend Amex Rule 980 to: (i) Simplify the manner in which a Contrary Exercise Advice ("CEA") is submitted to the Exchange; and (ii) extend by one hour the cut-off time by which members must submit to the Exchange CEA notices for customer accounts. On December 17, 2001, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change and Amendment No. 1 ("Original Proposal") were published for comment in the **Federal Register** on January 15, 2002.<sup>4</sup> The Commission received four comment letters regarding the Original Proposal.<sup>5</sup>

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 14, 2001 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 45253 (January 8, 2002), 67 FR 2003.

<sup>5</sup> See letters to Jonathan G. Katz, Secretary, Commission, from Mark R. Mudry, Chairman, the Options Operations Subcommittee of the OCC Roundtable, dated February 22, 2002 ("Subcommittee Letter"); Margo R. Topman, Vice President, Assistant General Counsel, Goldman, Sachs & Co., dated February 15, 2002 ("Goldman Sachs Letter"); Thomas N. McManus, Executive

Continued

<sup>27</sup> See Company Guide Section 107A.

<sup>28</sup> The ABS Securities will be registered under section 12 of the Act.

<sup>29</sup> See *supra* note 10.

<sup>30</sup> See, e.g., *supra* note 11.

<sup>31</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>32</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

Amex responded to the issues raised in the comment letters in Amendment No. 2, which Amex filed with the Commission on June 19, 2002.<sup>6</sup> On March 6, 2003, Amex submitted Amendment No. 3 to the proposal.<sup>7</sup> Amendment No. 3 was published for comment in the **Federal Register** on March 26, 2003.<sup>8</sup> The Commission received no comments regarding Amendment No. 3. On April 29, 2003, Amex submitted Amendment No. 4.<sup>9</sup> This order approves the proposed rule change, as amended.

## II. Description of the Proposed Rule Change

The Options Clearing Corporation ("OCC") has an established procedure that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as Exercise-by-Exception or "Ex-by-Ex." Option holders who wish to have their contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action; those contracts that are in-the-money by the appropriate amount will be automatically exercised. Option holders who do not want their options automatically exercised or who want their options to be exercised under parameters different than the Ex-by-Ex parameters must file a CEA<sup>10</sup> with the Exchange pursuant to Amex Rule 980 and instruct OCC of their contrary intention.<sup>11</sup>

In its Original Proposal, Amex proposed to amend Amex Rule 980 to simplify the manner in which a CEA is

submitted to the Exchange and extend by one hour the cut-off time for members to submit customer CEAs and Advice Cancels to the Exchange. Specifically, Amex proposed to: (1) Eliminate the requirement that a CEA be submitted if the option holder does not want to exercise an option when OCC has waived its Ex-by-Ex procedure for that options class;<sup>12</sup> (2) extend the cut-off time for members to deliver CEAs and Advice Cancels for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m. (EST)); (3) extend the time for making a final decision whether to exercise an expiring option and submit the CEA or Advice Cancel when the Exchange announces a modified time for the close of trading in equity options to 1 hour and 28 minutes after the announced close of trading for accounts of members and member firms, and establish a time period of 1 hour and 28 minutes following the time announced for the close of trading for customers to make a final decision on whether to exercise an expiring option, but a time period of 2 hours and 28 minutes after the close of trading instead of the current 6:30 p.m. to deliver a CEA or Advice Cancel to the Exchange; and (4) provide the Exchange with the ability to establish different exercise cut-off times on a case-by-case basis to address unusual circumstances.

## III. Summary of Comments and Amex's Response

The Commission received four comment letters regarding the Original Proposal.<sup>13</sup> Amex filed Amendment Nos. 2 and 3 to address the issues raised by the commenters.<sup>14</sup>

One commenter specifically expressed support for the Exchange's proposal to eliminate the requirement that a CEA be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. The commenter stated that "it makes sense to only require members to submit exercise notices for option positions they affirmatively want to exercise."<sup>15</sup>

Two commenters also supported the Exchange's proposal to extend the cut-off time for members to deliver CEAs for customer accounts to the Exchange by one hour (from 5:30 p.m. to 6:30 p.m.

(EST)).<sup>16</sup> However, they expressed concern that extending the cut-off time for customer accounts only and not firm accounts would increase processing burden<sup>17</sup> and create operational inefficiencies.<sup>18</sup> The commenters believed that the proposal would burden them with the process of having to separate firm and customer exercise notices into two batches in order to avail themselves of the extra hour given to deliver notices for customer accounts.

The Exchange responded to these comments by explaining that the Original Proposal was prompted by concerns expressed by clearing firms that the current 5:30 p.m. (EST) cut-off time was problematic for customer accounts due to the logistical difficulties of receiving customer exercise instructions and processing them through their retail branch systems and back office areas before submitting them to the Exchange.<sup>19</sup> The proposal had originally retained the 5:30 p.m. (EST) deadline for submission of CEAs for firm proprietary accounts because proprietary accounts did not present the same logistical difficulties as customer accounts. However, because the commenters stated that it would be operationally burdensome to develop different CEA processes for customer and firm accounts, Amex revised the proposal to adopt a single extended deadline of 6:30 p.m. (EST) for submission of CEAs for all accounts. The proposal to extend the deadline to 6:30 p.m. (EST) for firm accounts only applies to those member firms that have an electronic submission procedure that records the time that decisions whether to exercise or not exercise an option are received by the firm. The Exchange explicitly outlined the different CEA submission deadlines for non-customer accounts, in proposed Commentary .04, depending on the manner of the decision whether to exercise or not exercise, and required, in proposed Commentary .05, that each member organization establish fixed procedures to ensure that the time stamps used for the recording of the time of receipt of exercise decisions are secure.

Three commenters addressed Amex's Original Proposal to change the time period for members and member firms and customers to make a final decision and deliver the CEA or Advice Cancel when the Exchange announces a modified time for the close of trading in

Director and Counsel, Morgan Stanley, dated February 11, 2002 ("Morgan Stanley Letter"); and Mark Straubel, Assistant Vice President, Pershing, dated February 5, 2002 ("Pershing Letter").

<sup>6</sup> See letter (with exhibit) from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 18, 2002 ("Amendment No. 2"). The exhibit to Amendment No. 2 set forth proposed rule text, which was subsequently replaced by Amendment No. 3.

<sup>7</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated March 5, 2003, replacing Form 19b-4 in its entirety ("Amendment No. 3").

<sup>8</sup> See Securities Exchange Act Release No. 47540 (March 19, 2003), 68 FR 14717.

<sup>9</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Cynidi Rodriguez, Special Counsel, Division, Commission, dated April 28, 2003 ("Amendment No. 4"). In Amendment No. 4, Amex added rule text to proposed Amex Rule 980(d) that was included in Amendment No. 1 but inadvertently deleted in Amendment No. 3. This was initially subject to notice and comment in the Original Proposal.

<sup>10</sup> A CEA is a communication either to not exercise an option that would be automatically exercised under OCC's Ex-by-Ex procedure, or to exercise an option that would not be automatically exercised under OCC's Ex-by-Ex procedure.

<sup>11</sup> Amex Rule 980 also applies to the submission of Advice Cancels, which cancel CEAs.

<sup>12</sup> Currently, when OCC waives its Ex-by-Ex procedure for an options class, Amex Rule 980 requires the submission of a CEA evidencing the intention to exercise or not exercise.

<sup>13</sup> See *supra* note 5.

<sup>14</sup> See Amendment Nos. 2 and 3, *supra* notes 6 and 7.

<sup>15</sup> See Morgan Stanley Letter.

<sup>16</sup> See Goldman Sachs Letter and Morgan Stanley Letter.

<sup>17</sup> See Goldman Sachs Letter.

<sup>18</sup> See Morgan Stanley Letter.

<sup>19</sup> See Amendment No. 2, *supra* note 6.

equity options.<sup>20</sup> These commenters stated that while it might be appropriate for Amex to have the ability to *extend* the delivery time when Amex extends its closing time there might be an adverse effect on customers if the Exchange had the ability to *reduce* the decision making time frame when Amex announces a closing time prior to the regular close of trade. Specifically, the commenters expressed concerns over the manner in which Amex would notify members of the shortened period and how firms, in turn, would notify customers.

In response to these comments, Amex revised its proposed rule to state that in the event the Exchange provides advanced notice on or before 5:30 p.m. (EST) on the business day immediately prior to the last business day before the expiration date that a modified time for the close of trading in equity options will occur on such last business day before expiration, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 28 minutes following the time announced for the close of trading instead of 5:30 p.m. (EST). In addition, members and member organizations will have 2 hours 28 minutes following the close of trading to deliver a CEA or Advice Cancel to the Exchange for customer accounts, and non-customer accounts of member firms that employ electronic submission procedures with time stamps that record the time of submission of the exercise instructions. The Exchange represented that this proposed amendment would ensure that at least one day's prior notice is provided by 5:30 p.m. (EST) before the Exchange establishes an earlier cut-off time.<sup>21</sup>

Two commenters supported the proposal to provide the Exchange with the authority to extend the cut off times due to unusual circumstances, but believed that it would be inappropriate for the Exchange to use this authority to reduce the time frames.<sup>22</sup> Indeed, all four commenters urged the Exchange to define the term "unusual circumstances" and explain the conditions to which this provision would apply.<sup>23</sup> Three of these commenters requested that the Exchange outline how this provision would operate in terms of the time frame involved in informing members of the change in cut-off times and how it

would be implemented,<sup>24</sup> and two of the commenters believed that this provision should be limited to force majeure-type of events.<sup>25</sup>

The Exchange responded by revising paragraph (h) of Amex Rule 980. Proposed Amex Rule 980(h)(1) would provide the Exchange with the ability to *extend* cut-off times by which an options holder must decide whether to exercise an expiring option and by which a member must submit a CEA or Advice Cancel to the Exchange. The Exchange may make decisions to extend cut-off times on a case-by-case basis due to unusual circumstances. In proposed Commentary .03, Amex defined "unusual circumstances" for purposes of paragraph (h)(1) as including, but not limited to, increased market volatility, significant order imbalances, significant volume surges and/or systems capacity constraints, significant spreads between the bid and offer in underlying securities, internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders, or other similar occurrences.

Proposed Amex Rule 980(h)(2) would permit the Exchange to *reduce* the cut-off times by which an options holder must decide whether to exercise an expiring option and by which members must submit CEAs and Advice Cancels to the Exchange, but only if the Exchange provides notice to members by 12 p.m. (EST) on the day prior to the day with the reduced cut-off time. The Exchange may decide to reduce the cut-off times on a case-by-case basis due to unusual circumstances, provided, however, that under no circumstances may the cut-off times be before the close of trading. For purposes of paragraph (h)(2), Amex proposed to define "unusual circumstances" as including, but not limited to, significant news announcements concerning the underlying security of an option contract that is scheduled to be released after the close of trading on the business day immediately prior to expiration.

Finally, one commenter stated that the meaning of "customer" should be clarified.<sup>26</sup> Amex proposed in Commentary .01 that, for purposes of Amex Rule 980, the terms "customer account" and "non-customer account" have the same meaning as defined in OCC By-Laws Article I(C)(25) and Article I(N)(2), respectively.

#### IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,<sup>28</sup> in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Specifically, the Commission finds that Amex's proposal, as amended, is designed to simplify and clarify the process by which members and member firms accept exercise decisions from options holders and submit such decisions to the Exchange. For example, during instances when OCC has waived its Ex-by-Ex procedure for a particular options class, the Commission finds Amex's proposal to require the submission of a CEA only if the options holder wants to exercise the option contract to be less cumbersome and confusing for options holders and members.

Amex also proposed to extend the time by which CEAs and Advice Cancels must be delivered to the Exchange to 6:30 p.m. (EST). Options holders, however, must still decide whether to exercise or not exercise an expiring option by 5:30 p.m. The Commission believes that this new deadline should provide members with additional time to process the exercise decisions of options holders while maintaining the goal of the rule to prevent individuals from taking improper advantage of late-breaking news.

In the Original Proposal, Amex proposed that the 6:30 (EST) deadline apply only to public customer accounts. Several commenters noted that limiting the extension of the submission deadline to only public customers would create operational burdens. The Commission notes that Amex addressed these concerns by extending the use of the 6:30 p.m. (EST) deadline to all accounts. However, members that wish to submit CEAs and Advice Cancels of

<sup>20</sup> See Goldman Sachs Letter, Morgan Stanley Letter, and Subcommittee Letter.

<sup>21</sup> See Amendment No. 2, *supra* note 6.

<sup>22</sup> See Morgan Stanley Letter and Pershing Letter.

<sup>23</sup> See Goldman Sachs Letter, Morgan Stanley Letter, Subcommittee Letter, and Pershing Letter.

<sup>24</sup> See Morgan Stanley Letter, Subcommittee Letter, and Pershing Letter.

<sup>25</sup> See Goldman Sachs Letter and Morgan Stanley Letter.

<sup>26</sup> See Subcommittee Letter.

<sup>27</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

non-customers by the 6:30 p.m. (EST) deadline must use an electronic time stamp to record the time the member received the exercise decision from the non-customer options holder. This requirement is in response to Amex's concern that firms that manually submit CEAs or Advice Cancels could have an opportunity to improperly extend the 5:30 p.m. (EST) deadline to decide whether to exercise an expiring option. The Commission believes that the requirement that an electronic time stamp be employed in such circumstances adequately addresses these concerns.

Amex also proposed alternate time frames for exercise decisions and CEA and Advice Cancel submissions when trading times are modified. Specifically, if the Exchange announces a modified close of trading by 5:30 p.m. (EST) on the business day immediately prior to the last business day before expiration, then options holders will have 1 hour and 28 minutes after the close of trading to make a decision whether to exercise an expiring option and members will have 2 hours and 28 minutes to submit CEAs and Advice Cancels of customers and non-customers to the Exchange.<sup>29</sup> In addition, Amex proposed to allow it to extend cut-off times for exercise decisions and CEA and Advice Cancel submissions due to unusual circumstances<sup>30</sup> and on a case-by-case basis. Finally, Amex proposed to allow it to reduce cut-off times for exercise decisions and CEA and Advice Cancel submissions due to unusual circumstances<sup>31</sup> so long as the Exchange provides at least one business day prior notice, by 12 noon on such day. If the Exchange reduces cut-off times, however, they cannot set such cut-off times before the close of trading.

As noted above, several commenters raised concerns regarding the Exchange's ability to modify the cut-off

<sup>29</sup> As required above, members must use an electronic time stamp for non-customer exercise decisions. If a member does not employ an electronic time stamp procedure, then it must submit the CEAs and Advice Cancels of non-customer options holders within 1 hour and 28 minutes following the close of trading.

<sup>30</sup> For purposes of extending cut-off times, Amex defined "unusual circumstances" as including increased market volatility, significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal systems malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

<sup>31</sup> For purposes of reducing cut-off times, Amex defined "unusual circumstances" as including a significant news announcement concerning the underlying security of an options contract that is scheduled to be released just after the close of trading on the business day immediately prior to expiration.

times. The Commission believes that Amex addressed commenters concerns by requiring that advance notice be provided in the event that Amex modifies the cut-off times due to either modified trading hours or unusual circumstances. The Commission believes that the advance notice requirements should enable members to notify customers and non-customers of the modified cut-off times.

#### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended by Amendment Nos. 1, 2, 3 and 4, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change, as amended, (SR-Amex-2001-92) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47883; File No. SR-NASD-2003-72]

#### Self-Regulatory Organizations; Notice of Filing of 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

May 16, 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 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") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On May 15, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

change.<sup>3</sup> 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

Nasdaq proposes 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"). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

#### 4710. Participant Obligations in NNMS

- (a) No Change.
- (b) Non-Directed Orders.
- (1) No Change.
- (A) through (B) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferred Order in an amount equal to the system-delivered order or execution.

- (i) No Change.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within [30] 7 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the

<sup>3</sup> 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"). Amendment No. 1: (1) Inserts a section I to Exhibit 1 of the filing that Nasdaq inadvertently excluded; and (2) clarifies in the purpose section of the proposal that Nasdaq believes that commenters concerns regarding prior SuperMontage system issues related to the delivery of orders to market participants are no longer valid.