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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49752; File No. SR–NASD–2004–055]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Related to Clarification of the Price/Time Execution Algorithm in SuperMontage

May 21, 2004.

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 March 29, 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'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On May 10, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on May 20, 2004.[4] 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 the Substance of the Proposed Rule Change

Nasdaq proposes to clarify rule language describing the operation of the price/time execution algorithm in the Nasdaq Market Center system when using the ''I'' anti-internalization qualifier. Nasdaq will implement the proposed rule change immediately.

Below is the text of the proposed rule change. Proposed new language is *italics;* proposed deletions are in [brackets].

* * * * *

4710. Participant Obligations in the Nasdaq Market Center

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in a Nasdaq Market Center eligible security, as well as Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) through (iv) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the Nasdaq Market Center will ascertain who the next Quoting Market Participant or Order Entry Firm in queue to receive an order is and shall deliver an execution to Quoting Market Participants or Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the Nasdaq Market Center system shall be delivered to or automatically executed against Quoting Market Participants' or Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to the Nasdaq Market Center shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm described below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the quotation montage of the Nasdaq Market Center, remain in system and available for execution.

(i) Execution Algorithm—Price/Time—The system will access interest in the system in the following priority and order:

a. through c. No Change.

(ii) Exceptions—The following exceptions shall apply to the above execution parameters:

a. If a Nasdaq Quoting Market Participant or Order Entry Firm enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the Nasdaq Market Center will first attempt to match off the order against the Nasdaq Quoting Market Participant's or Order Entry Firm's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Nasdaq Quoting Market Participants and Order Entry Firms may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of [Nasdaq] Quoting Market Participants and Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party; provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order *based on the price/time execution algorithm* [in price/time priority].

b. through f. No Change.

(C) through (D) No Change.

(2) through (8) No Change.

(c) through (e) 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.

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 7, 2004 (''Amendment No. 1''). Amendment No. 1 replaces the original 19b–4 in its entirety.

[4] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division, Commission, dated May 20, 2004 (''Amendment No. 2''). Amendment No. 2 makes technical changes to the rule text.

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

1. Purpose

On February 11, 2004, the Commission approved SR–NASD–2003–128 containing Nasdaq's proposal to eliminate the price/size and price/time with fee consideration execution algorithms from the SuperMontage system.[5] One rule change approved at that time was a modification to NASD Rule 4710(b)(1)(B)(ii)(a) relating to the use of the ''I'' anti-internalization qualifier and the price time execution algorithm of the system. Language added to that rule indicated that use of the I anti-internalization qualifier would result in processing of quotes/orders in price/time priority. This rule change clarifies that the system processes quotes/orders in conformity with the price/time execution algorithm described in NASD Rule 4710(b)(1)(B)(i).

In addition, this proposal also removes the term ''Nasdaq'' from the rule language describing the operation of the ''Y'' anti-internalization qualifier to make clear that orders entered with that designation interact with any resting quotes/orders of UTP Exchanges residing in the system. The use of the defined term Nasdaq Quoting Market Participant gives the incorrect impression that orders entered into the system with the Y qualifier will not execute against the party entering that order and will also only interact with quotes/orders of Nasdaq ECNs, Nasdaq Market Makers, Order-Entry Firms and ITS/CAES market makers. By removing the term Nasdaq, the rule will correctly indicate that the use of the Y qualifier only inhibits interaction with the quote/order of the party entering the Y–flagged order and that such orders remain free to interact with the quotes/orders of all other Nasdaq Market Center participants (market makers, ECNs, order-entry firms, UTP exchanges and ITS/CAES market makers.)

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with section 15A of the Act,[6] in general, and with section 15A(b)(6) of the Act,[7] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

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

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

The proposed rule change has been filed by Nasdaq pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Because the foregoing 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 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of the investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive both five-day notice and the 30-day operative delay specified in Rule 19b–4(f)(6)(iii).[13]

The Commission believes that waiving the five-day notice and the 30-day operative delay is consistent with the protection of investors and the public interest[14] because it will allow Nasdaq to clarify rule language regarding the Nasdaq Market Center system. For these reasons, the Commission designates the proposed rule change as effective and operative on May 20, 2004.[15] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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*. Please include File Number SR–NASD–2004–055 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–2004–055. 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

[5] *See* Securities Exchange Act Release No. 49220 (February 11, 2004), 69 FR 7836 (February 19, 2004). The SuperMontage System has since been renamed The Nasdaq Market Center. *See* SR–NASD–2004–76 (filed on an immediately effective basis on May 5, 2004).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on May 20, 2004, the date Nasdaq filed Amendment No. 2.

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–2004–055 and should be submitted on or before June 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49746; File No. SR–NASD–2004–081]

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

May 20, 2004.

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 May 17, 2004, 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 and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change 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.[5] 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 the listing standards for units. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.[6]

* * * * *

Rule 4420. Quantitative Designation Criteria

(a)–(g) no change.

(h) Units

(1) *Initial and Continued Inclusion Requirements*

(a) All units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing under Rules 4420 and 4450, as applicable, or, in the case of debt components, satisfy the requirements of 4420(h)(1)(b).

(b) All debt components of a unit, if any, shall meet the following requirements:

(i) the debt issue must have an aggregate market value or principal amount of at least $5 million;

(ii) the issuer of the debt security must have equity securities listed on the Nasdaq National Market; and

(iii) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

(c) All components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued inclusion requirements under Rules 4420 and 4450, as applicable.

(2) Minimum Inclusion Period and Notice of Withdrawal

In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide Nasdaq with notice of such intent at least 15 days prior to withdrawal.

([2]*3*) Disclosure Requirements for Units

Each Nasdaq National Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. *The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. An issuer shall also disclose when a component of the unit is separately listed on Nasdaq. These disclosures shall be made on the issuer's website, or if it does not maintain a website, in its annual report provided to unit holders. An issuer shall also immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public notification shall be made as soon as practicable in relation to the effective date of the 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

Nasdaq has recently received inquiries about listing of units comprised of common stock and subordinated notes, sometimes referred to as Income Deposit Securities or IDS's.

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] Nasdaq asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] The proposal is marked against the rule text of the current NASD manual, which is available on *www.nasdaq.com*. There are no other pending rule filings that would affect the text of this rule.