securities and would supersede NASD Rule 3350. The Nasdaq has alerted market participants that the adoption of Regulation SHO would impact the regulation of short sales on the Nasdaq and on other markets in a number of ways. The adoption of Regulation SHO would supersede elements of this proposal, including requiring short sales on the Nasdaq to utilize an NBBO-based bid test and eliminating the application of primary market maker standards. The Nasdaq has encouraged firms to analyze the proposal and its impact on their execution and order management systems in anticipation of its adoption.

2. Statutory Basis

The Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[15] in general and with Section 15A(b)(6) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to 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

The Nasdaq does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(6)[18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Nasdaq seeks to have the proposed rule change become operative on or before December 16, 2003, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii),[21] the Nasdaq is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission notes that unless extended, the Pilot will expire, and this could disrupt the proper operation of the Nasdaq. 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–191. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 file number SR–NASD–2003–191 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32037 Filed 12–29–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48972; File No. SR–NASD–2003–185]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Modify SuperMontage Pricing

December 22, 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 December 11, 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. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for Nasdaq's SuperMontage system. Pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] Nasdaq has designated the proposed rule change as non-controversial and requests that the Commission waive the 30-day pre-operative requirement contained in SEC

[15] 15 U.S.C. 78*o*-3.

[16] 15 U.S.C. 78*o*-3(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] *Id.*

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 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)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Rule 19b–4(f)(6)(iii).[5] If the Commission grants such waiver, Nasdaq will implement the proposed rule change on January 1, 2004.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

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 Preferenced Orders)	No charge
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge
Other Preferenced Orders	$0.02 per order entry
Directed Orders	$0.10 per order entry
Order Execution	
Non-Directed or Preferenced 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:	[$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share)]
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 Preferenced 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	[$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share)]
Charge to member entering order:	
Average daily shares of liquidity provided through the NNMS by the member during the month:	
400,000 or less	*$0.001 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 Preferenced 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 Preferenced Orders	No charge
Directed Orders	$0.10 per order cancelled

(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

Nasdaq proposes to implement reduced pricing for execution of Non-Directed and Preferenced Orders in the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). Nasdaq's current fee schedule for SuperMontage features: (i) A $0.003 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced 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 SuperMontage, (ii) a $0.001 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee, and (iii) a $0.002 per share credit to a member that provides the liquidity for an execution and does not charge an access fee.[6]

Nasdaq states that as part of an ongoing effort to reduce the costs

[5] 17 CFR 240.19b–4(f)(6)(iii). Nasdaq provided written notice of its intent to file the proposed rule change, along a with a brief description and the text of the proposed rule change, on November 26, 2003.

[6] Transactions in a security priced under $1.00 ("low-priced trades") are subject to a fee and credit cap applicable to trades in excess of 40,000 shares.

incurred by market participants to use Nasdaq services, it proposes to reduce order execution fees for members that provide liquidity through the NNMS. These fees would be reduced in a manner that would make the per share fee charged to a member to access liquidity during a particular month depend on the extent to which such member provided liquidity through the NNMS during that month (regardless of whether such member charges an access fee). Liquidity provision would be measured by adding the number of shares executed through transactions in which the member's Quote/Order was accessed by another market participant.[7] Thus, during a month in which a member provided a daily average of more than 5,000,000 shares of liquidity through the NNMS, the member would pay $0.0025 per share executed in trades in which the member accessed liquidity provided by a market participant that does not charge an access fee (*i.e.*, in which the member's Non-Directed or Preferenced Orders accessed the Quotes/Orders of other market participants).[8] During a month in which a member provided a daily average of 400,001 to 5,000,000 shares of liquidity, the member would pay $0.0027 per share executed in trades in which the member accessed liquidity provided by a market participant that does not charge an access fee.[9] Finally, in a month in which a member provided a daily average of 400,000 or fewer trades, the member would pay the current fee of $0.003 per share executed.[10]

Similarly, the fee paid by a member to access the Quote/Order of a market participant that charges an access fee would depend upon the shares of liquidity provided by the member during the month. During a month in which a member provided a daily average of more than 400,000 shares of liquidity, the member would pay $0.001 per share executed for trades in which the member accessed liquidity provided by a market participant that charges an access fee;[11] however, the member's total monthly charge would be capped at $10,000. During a month in which a member provided a daily average of 400,000 shares of liquidity or less, the member would also pay the current fee of $0.001 per share, but no monthly cap would be applicable.[12]

Nasdaq states that although the proposal will result in members paying fees to access liquidity that vary depending on the extent to which they provide liquidity, Nasdaq strongly believes that the proposal is consistent with the Act and with Commission precedent. Nasdaq believes that the extent to which members provide liquidity through SuperMontage is the single most important factor in determining whether SuperMontage provides an attractive destination, and in turn, whether SuperMontage will generate sufficient revenues to cover the costs of operating and regulating a market. Nasdaq believes a member that offers significant liquidity at prices that establish, or that are near, the national best bid/best offer, makes SuperMontage a more attractive destination for market participants seeking to access liquidity. While many liquidity destinations have used increases in liquidity provider rebates to attract liquidity, Nasdaq believes that higher liquidity rebates are creating distortions in market structure that lead to increased instances of locked and crossed markets. Although Nasdaq's proposed pricing schedule must, for competitive reasons, continue to provide payments for liquidity providers, Nasdaq believes that it is more appropriate to recognize the value of liquidity provision through discounts on the fee for accessing liquidity.

The costs of operating SuperMontage and regulating the Nasdaq market are overwhelming fixed, rather than variable, costs. As SuperMontage's volume increases (*i.e.*, as more and more liquidity is provided through SuperMontage), Nasdaq's costs, on a per share basis, decrease. Accordingly, Nasdaq believes that it is appropriate and equitable to allocate these costs in a manner that takes account of the lower per share costs associated with higher volumes of liquidity provision. Put another way, lower volumes would translate into higher per share costs for market participants; higher volumes reduce per share costs, and Nasdaq believes that the benefits of these reduced costs can and should be made available to those market participants that make the higher volumes possible in the first place. Moreover, there are economies of scope associated with higher volumes of liquidity provision, because trades executed through SuperMontage also have market data revenue and (in some cases) Automated Confirmation Transaction (''ACT'') fees associated with them.

Nasdaq notes that on several occasions in the past, the Commission has approved or allowed the immediate effectiveness of SRO proposals to establish tiered pricing in which the price that different members pay for a service varies, depending on a related variable. For example, Rule 11.10(c) of the NSX (formerly the Cincinnati Stock Exchange) provides that the fee a member pays for agency limit orders depends upon the percentage of public agency market order shares executed during a trading month. Similarly, according to Nasdaq, the New York Stock Exchange's Price List[13] reflects a display device charge for professional subscribers to market data feeds that varies on a per device (rather than a marginal) basis, depending on the number of devices. Thus, a subscriber with few devices pays high fees for each of its devices, while a subscriber with more devices pays lower fees for each of its devices. Nasdaq believes that such pricing structures, like the pricing proposed herein, are entirely appropriate, provided they base the price that a particular member pays upon cost and/or revenue factors associated with providing services to that member.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[14] in general, and with Section 15A(b)(5) of the Act,[15] 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 which the NASD operates or controls. The proposed rule change bases the fees applicable to accessing liquidity through SuperMontage on the extent to which a member provides liquidity, thereby taking account of the lower per share costs and the economies of scope associated with higher volumes of liquidity provision.

[7] If a particular corporate entity has multiple market participant identifiers (''MPIDs'') associated with the Central Registration Depository (''CRD'') number under which it conducts business, Nasdaq will aggregate shares of liquidity provided through all of its MPIDs. However, Nasdaq will not aggregate one corporate entity's trade reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

[8] As is true today, a low-priced trade would be subject to a fee cap applicable to trades in excess of 40,000 shares. Accordingly, when the fee that the member pays is $0.0025, the maximum per transaction charge for a low-priced trade would be $100.

[9] When the fee that the member pays is $0.0027, the maximum per transaction charge for a low-priced trade would be $108.

[10] When the fee that the member pays is $0.003, the maximum per transaction charge for a low-priced trade would be $120.

[11] The maximum per transaction charge for a low-priced trade would be $40.

[12] The maximum per transaction charge for a low-priced trade would be $40.

[13] *See www.nyse.com/pdfs/2003pricelist2.pdf.*

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(5).

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, 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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[16] of the Act and Rule 19b–4(f)(6) thereunder.[17] 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission finds waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[18] Acceleration of the operative date will allow the proposed price reduction to take effect as quickly as possible and at the beginning of a calendar month, January 1, 2004. Implementation of the pricing change at the beginning of a calendar month will assist Nasdaq in automating the preparation of members' bills for January 2004, since the same pricing schedule would be in effect for each day of the month. It will also assist members' understanding of the bills that they receive for that month.

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. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–185. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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 File No. SR–NASD–2003–185 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32038 Filed 12–29–03; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating 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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48973; File No. SR–NASD–2003–190]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Interpret Two Provisions of New NASD Rule 2790 Relating to Initial Public Offerings

December 22, 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 December 19, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 the NASD. The 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 amended 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

The NASD is filing with the Commission portions of a *Notice to Members* discussing the application of NASD Rule 2790. The NASD is not proposing any textual changes to the rules of NASD.

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

In its filing with the Commission, the 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. The NASD 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

On October 24, 2003, the Commission approved new NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings).[4] As stated in the Commission approval order, NASD will publish a *Notice to Members* discussing the application of its Rule 2790. In consulting with the Commission staff regarding the *Notice,* the Commission staff determined that two provisions in the *Notice* constitute interpretations of NASD Rule 2790 that,

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (approving File No. SR–NASD–99–60).