

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 ISE. All submissions should refer to SR-ISE-2003-11 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47488; File No. SR-NASD-2002-107]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment Nos. 1, 2, 3, and 4 Thereto by the National Association of Securities Dealers, Inc. To Retroactively Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperSoes Transactions in Low-Priced Securities

March 12, 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 August 6, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 August 19, 2002, Nasdaq submitted Amendment

No. 1 to the proposed rule change.³ On August 30, 2002, Nasdaq submitted Amendment No. 2 to the proposed rule change.⁴ On October 9, 2002, Nasdaq submitted Amendment No. 3 to the proposed rule change.⁵ On February 21, 2003, Nasdaq submitted Amendment No. 4 to the proposed rule change.⁶ 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

Retroactive to July 1, 2002, Nasdaq proposes to: (1) Establish a \$75 maximum execution fee cap for a single SuperSoes transaction; and (2) Establish a \$37.50 maximum cap on the rebate amount provided by Nasdaq to market participants that provide liquidity to its market.⁷ The text of the proposed rule change, as amended, appears below. New text is in *italics*; deletions are in brackets.

* * * * *

7010. System Services

(a)-(h) No change.

(i) Transaction Execution Services.

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES).

The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—\$0.10 per order entry (entering party only)

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 16, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule text.

⁴ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 30, 2002 ("Amendment No. 2"). In Amendment No. 2, Nasdaq made a technical correction to the proposed rule text.

⁵ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 9, 2002 ("Amendment No. 3"). In Amendment No. 3, Nasdaq made a technical correction to the proposed rule text.

⁶ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 20, 2003 ("Amendment No. 4"). In Amendment No. 4, Nasdaq made technical corrections to the proposed rule text.

⁷ Nasdaq also filed a separate proposal, pursuant to Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii), to establish these same fee and rebate limits on a going-forward basis. See Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR-NASD-2002-106).

Per Share Charge—\$0.001 per share executed for all fully or partially executed orders (entering party only)
Cancellation Fee—\$0.25 per order cancelled (canceling party only)

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only).

Effective July 1, 2002, [F] for trades in securities that are executed at a price of \$1.00 or less per share, the maximum charge per trade under this section shall not exceed \$75.00.

(3) No change.

(4) Liquidity provider rebate.

For a pilot period commencing on November 1, 2001 and lasting until March 31, 2003:

(A) NASD members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of \$0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) NASD members will receive a rebate of \$0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.

(C) *Effective July 1, 2002*, [F] for trades in securities that are executed at a price of \$1.00 or less per share, the maximum rebate available per trade under section (4) of this rule shall not exceed \$37.50.

(j)-(s) 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, as amended, 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.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

In order to control trading costs for low-priced stocks, Nasdaq proposes to establish, retroactive to July 1, 2002, a maximum SuperSoes execution fee of \$75.00 per trade and liquidity provider rebate cap of \$37.50 per trade for securities trading at \$1.00 or less per share.

Nasdaq assessed on parties entering orders into SuperSoes a \$0.002 per share charge for all resulting full or partial trade executions. This fee applied regardless of the price of the individual security traded and there was no maximum fee per individual trade. Nasdaq also rebated \$0.001 per share to market participants that provided liquidity to the market by having their quotes accessed by SuperSoes orders, when those quoting market participants did not themselves charge a separate fee for that access. When a market participant entered an order into SuperSoes that interacted with the quote of an access fee-charging Electronic Communications Network ("ECN"), Nasdaq likewise rebated \$0.001 per share to that entering party. Like the per-share SuperSoes execution fee, these rebates had no maximum dollar amount.

Nasdaq represents that market activity caused the prices of many Nasdaq securities to fluctuate, and in some cases lose significant value. As the prices of these securities declined, market participants generally needed to purchase or sell an increasing number of total shares to actively participate in the market for these issues. This increase in the size of individual transactions, when combined with SuperSoes' unlimited per share fee structure, raised execution costs to market participants. Similarly, large transactions involving low-priced securities also can result in disproportionate liquidity-provider rebates.

In response, Nasdaq has determined to establish per trade maximums for SuperSoes execution fees and liquidity provider rebates in low-priced (\$1.00 or less per share) securities. Under the proposal, Nasdaq would cap at \$75 the maximum execution fee it would impose on the entering party for a single SuperSoes trade where the price of the security traded was one dollar or less. For rebates, Nasdaq would cap at \$37.50 the amount it gives back to market participants for providing liquidity in low-priced securities or when their orders access the low-priced quotes of

fee-charging ECNs. Nasdaq notes that the ratio between its low-priced maximum per trade fee and per trade rebate is the same as those that are applicable to higher-priced issues.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general, and with section 15A(b)(5) of the Act,⁹ 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 association operates or controls.

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

Nasdaq does not believe that the proposed rule change, as amended, 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

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 NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-107 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 19, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimate are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, (202) 205-7528 or Curtis B. Rich, Management Analyst, (202) 205-7030.

SUPPLEMENTARY INFORMATION:

Title: "Reporting and Recordkeeping Requirements on Small Business Lending Companies—13 CFR 120-302".

Form No: N/A.

Description of Respondents: Small Business Lending Companies.

Annual Responses: 2,400.

Annual Burden: 2,400.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).