

# Notice to Members

OCTOBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Senior Management

## SuperMontage

NASDAQ Provides Guidance on Recent Amendments to "Trade-or-Move" Rule and SuperMontage Opening Process

## KEY TOPICS

SuperMontage

## Executive Summary

On May 28, 2002, the Securities and Exchange Commission (SEC) approved amendments made by The Nasdaq Stock Market, Inc. (NASDAQ®) to NASD Rule 4613(e), the Trade-or-Move Rule.<sup>1</sup> The amendments change three aspects of the Trade-or-Move Rule as it operates today between 9:20 and 9:29:59 a.m., Eastern Time (ET).

- (1) **Sequence of messaging:** Electronic communications networks (ECNs) will now be required to send Trade-or-Move Directed Orders prior to entering locking/crossing quotes, and market makers will continue to be required to send Trade-or-Move Directed Orders after entering locking/crossing quotes;
- (2) **Response Time:** The time to respond to a Trade-or-Move Directed Order will be reduced from 30 seconds to 10 seconds; and
- (3) **Minimum Share Requirement:** The amendment creates a 10,000-share minimum requirement for Trade-or-Move Directed Orders for NASDAQ-100 Index® (NASDAQ-100) and S&P MidCap 400 Index (S&P-400) issues, while preserving the 5,000-share requirement for all other securities. The rule filing also preserves the existing exception for agency orders.

As a result of these changes, ECNs will be required to send a Trade-or-Move Directed Order and then wait 10 seconds before entering a locking/crossing quotation. If the ECN receives no response, it may then cancel the Trade-or-Move Directed Order and enter a locking/crossing quote. If the recipient trades in full, the ECN will be required to send another Trade-or-Move Directed Order prior to entering a lock/cross.

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Market makers will adhere to the Rule as they do today, taking into account the modified minimum share and response time requirements. The Trade-or-Move requirements apply only to the markets that participate in NASDAQ market systems. Currently, those markets are NASDAQ and the Chicago Stock Exchange, Inc.

On August 23, 2002, the SEC approved the new SuperMontage<sup>SM</sup> opening process.<sup>2</sup> Beginning at 9:29:30 a.m., ET, the system will resolve any outstanding locked/crossed markets through a matching process that will continue until all locked/crossed orders are cleared.

As members are aware, NASDAQ started to implement SuperMontage, including the new opening process, beginning on October 14, 2002, on a security-by-security basis. NASDAQ has decided to implement both the Trade-or-Move Rule changes as well as the SuperMontage opening process changes as NASDAQ rolls out SuperMontage in a particular security. **In other words, the new Rule amendments will be implemented on a security-by-security basis, as soon as each NASDAQ security begins to trade on SuperMontage.** The current Trade-or-Move Rule obligations will continue to apply to all securities continuing to trade through SuperSoes<sup>SM</sup>.

Attachment A includes a question and answer section that explains the major points of the rule changes. Attachment B includes the text of the amended rule.

## Questions/Further Information

Legal questions regarding this *Notice* may be directed to Jeffrey Davis, Associate General Counsel, or Thomas Moran, Associate Vice President, Office of General Counsel, NASDAQ, at (202) 728-8088. General trading questions may be directed to John Malitzis, Vice President; Karen Peterson, Associate Vice President; or Mary Revell, Associate Vice President; NASDAQ Transaction Services, at (212) 858-4322. Questions about market operations or the Clearly Erroneous Trade Rule may be directed to Dan Franks, Senior Vice President, NASDAQ Market Operations, NASDAQ, at (800) 219-4861.

## Background and Explanation

To address ongoing concerns with locked/crossed markets prior to the open, NASDAQ proposed, and the SEC approved (on May 28, 2002), changes to NASD Rule 4613(e). The rule change alters three aspects of the Trade-or-Move Rule as it operates today between 9:20 and 9:29:59 a.m., ET. First, ECNs will be required to send Trade-or-Move Directed Orders prior to entering locking or crossing quotes, while market makers will continue to be required to send Trade-or-Move Directed Orders after entering locking or crossing quotes. Second, the time to respond to a Trade-or-Move Directed Order will be reduced from 30 seconds to 10 seconds. Third, the amendment creates a 10,000-share minimum requirement for Trade-or-Move Directed Orders for NASDAQ-100 and S&P 400 issues, while preserving the 5,000-share minimum requirement for all other securities. The rule filing preserves the existing exception to the minimum share requirement of 5,000 or 10,000 shares for agency orders.

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## Sequence of Messages

Under the new Trade-or-Move Rule, the sequence of Trade-or-Move Directed Orders will differ by market participant business model. The Rule has been changed to require ECNs to send a Trade-or-Move Directed Order before entering a locking/crossing quotation. The sequence procedures applicable to market makers will remain unchanged from the requirements under the current Rule: they are required to send a Trade-or-Move Directed Order immediately after entering a locking or crossing quote. The revised sequence applicable to ECNs, combined with the requirement to respond to a Trade-or-Move Directed Order within 10 seconds, should help ECNs avoid dual liability. The revised Rule will allow an ECN to send a Trade-or-Move Directed Order for the actual size of an agency order, wait 10 seconds for a response, and, assuming it receives no response, cancel the Trade-or-Move Directed Order and enter the agency order as a locking or crossing quote.

## Response Time

The time for responding to a Trade-or-Move Directed Order has been reduced to 10 seconds from 30 seconds. This reduced response time should help facilitate the prompt resolution of locked and crossed markets when they occur.

## Minimum Share Requirement

Under the current Trade-or-Move Rule, the aggregate size of the Trade-or-Move Directed Order must be for either at least 5,000 shares (*i.e.*, the market participant must send a total of 5,000 shares to all parties it is locking or crossing) in the case of a proprietary quote or the actual size of the agency order if that is the basis for the locking or crossing quote (the "agency exception"). The amended Rule will require a market participant handling a proprietary order to send a Trade-or-Move Directed Order for a minimum of 10,000 shares in the case of NASDAQ-100 and S&P-400 issues and will retain the 5,000-share minimum requirement for all other issues. The "agency exception" will continue to operate as it does today. This means that if a market participant is representing agency interest that locks or crosses the market, it is required to send a Trade-or-Move Directed Order for the size of the agency interest (not the full 5,000 or 10,000 shares). This new size requirement may deter the entering of locking or crossing quotations in securities that are characterized by higher liquidity and faster trading.

## SuperMontage Opening Process; How Trade-or-Move Interacts with New Opening Process

The SEC approved the new SuperMontage opening process on August 23, 2002. The new rules (1) permit the entry of market orders prior to 9:30 a.m., ET; (2) revise the time frame for the entry of Trade-or-Move Directed Orders to between 9:20 a.m. and 9:29:29 a.m., ET (from 9:29:59 a.m., ET); and (3) modify the SuperMontage opening process.

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Under the new opening process, starting at 9:29:30 a.m., ET, NASDAQ will resolve any outstanding locked and crossed markets. The system will pair off the most aggressively priced buy quote/order against the most aggressively priced sell quote/order. Once this “best-priced pair” is determined, the system will execute the two identified orders at the price of the newer order until the older order is fully satisfied. If the displayed size becomes exhausted at that price level, SuperMontage will continue to execute against available reserve size at that price level. This process will be repeated until an unlocked and uncrossed market results. After the initial locks/crosses are cleared, any additional locking or crossing quotes/orders entered between 9:29:30 and 9:29:59 a.m., ET, will be cleared consistent with the SuperMontage process for clearing locks and crosses applicable during regular market hours.

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## ATTACHMENT A

### Questions and Answers

Outlined below are a series of Questions and Answers. These Questions and Answers supplement the guidance provided in *NASD Notice to Members 00-29*.

#### General Obligations

1. **Q. When will the Trade-or-Move (“Trade-or-Move”) Rule amendments be implemented?**

A. The amendments will be implemented on a security-by-security basis at the same time that a security begins trading on SuperMontage<sup>SM</sup>. The current Trade-or-Move Rule obligations will continue to apply to all securities continuing to trade through SuperSoes<sup>SM</sup>.

2. **Q. After the launch of SuperMontage, must market participants still use SelectNet<sup>®</sup> to deliver Trade-or-Move Directed Orders during the 9:20 to 9:29:29 a.m., Eastern Time (ET), period?**

A. Market participants must use SuperMontage “Directed Orders” to deliver Trade-or-Move Directed Orders; they may not use any other system to comply with the Trade-or-Move Rule. (Note that the SuperMontage Directed Order Process is an enhanced version of SelectNet, and the Directed Order windows and messages on the NASDAQ Workstation II are still labeled as SelectNet.) Market participants will format Directed Orders in the same manner they format SelectNet Trade-or-Move Directed Orders. See Question 3 in *NASD Notice to Members 00-29* for further guidance.

3. **Q. What is the relationship between the rule amendments and the rule that currently governs pre-opening locks or crosses?**

A. The rule amendments will modify the current rule only as described in this *Notice*. Unless otherwise noted, all current obligations imposed under the rule will remain the same as described in *NASD Notice to Members 00-29* and related *NASDAQ Head Trader Alerts*.

4. **Q. What is the relationship between the approved rule amendments and the approved amendments to the SuperMontage opening?**

A. The amendments to the SuperMontage opening process revise the time frame for the entry of Trade-or-Move Directed Orders to conform to the changes in the opening process. The time frame for entering Trade-or-Move Directed Orders is now between 9:20 and 9:29:29 a.m., ET (as opposed to 9:29:59 a.m., ET). See discussion of the relationship between the Trade-or-Move Rule and the SuperMontage opening process, below.

5. **Q. How long does a market participant have to respond to a Trade-or-Move Directed Order?**

A. 10 seconds. The rule amendments reduce the response time from the current 30 seconds to 10 seconds.

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6. Q. Must a Trade-or-Move Directed Order always include a minimum of 5,000 shares?

A. No. For stocks included in the NASDAQ-100 Index® and the S&P MidCap 400 Index, a market maker or electronic communication network (ECN) must send a Trade-or-Move Directed Order(s) for at least 10,000 shares, unless the quote/order represents an agency order. Trade-or-Move Directed Orders for all other stocks must include a minimum of 5,000 shares, unless the quote/order represents an agency order. The “agency exception” contained in the Trade-or-Move Rule, which states that a market participant that is representing an agency order (as defined in the Rule) is required to send a Trade-or-Move Directed Order in an amount equal to the agency order, even if that order is less than 5,000/10,000 shares, will continue to operate as it does today.

7. Q. How will market makers and ECNs know which securities are in the NASDAQ 100 and the S&P MidCap 400 Index?

A. NASDAQ will post on *NASDAQtrader.com* a list of securities included in these indices and for which the obligation to send 10,000 shares exists. That list will be the official source of information with respect to this obligation, and will be published on the first day of every month. The list is available on *NASDAQtrader.com* under SuperMontage Hot Topics (General Section).

8. Q. Can a market participant satisfy the minimum share requirement by sending two or more Trade-or-Move Directed Orders to two or more different quotes/orders?

A. Yes, as long as the aggregate size of all Trade-or-Move Directed Orders equals the minimum share requirement.

9. Q. If a market participant receives a Trade-or-Move Directed Order from an ECN, what are its options?

A. The recipient can trade in full (i.e., fill the incoming Directed Order for the full size of the order), in which case it is not required to move its quote. Alternatively, if the recipient of a Trade-or-Move Directed Order does not trade in full, it is required to move to a price that would **both** not lock or cross the market, and is at a minimum \$0.01 away from the price of the inbound Trade-or-Move Directed Order from the ECN, because the ECN's quote has not yet been posted.

10. Q. If a market participant receives a Trade-or-Move Directed Order from a market maker, what are its options?

A. The recipient can trade in full, in which case it is not required to move its quote. Alternatively, if the recipient of a Trade-or-Move Directed Order does not trade in full, it is required to move to a price that would not lock or cross the market.

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## ECN Obligations

11. Q. What are an ECN's options for entering a quote/order between 9:20:00 a.m. and 9:29:29 a.m., ET, that would lock/cross the market if displayed in NASDAQ during that period?

A. **Before** entering a quote/order that would lock or cross the market, the ECN must send a Trade-or-Move Directed Order and wait **10** seconds for a response to that message. This requirement applies regardless of the type of locking/crossing quote or order (agency or principal) entered.

12. Q. What are an ECN's obligations if, after it has sent a Trade-or-Move Directed Order and has waited 10 seconds, the recipient of the Trade-or-Move Directed Order has not traded in full or moved its quotation?

A. If the recipient of a Trade-or-Move Directed Order does not respond properly and in a timely manner to a Trade-or-Move Directed Order sent by an ECN, the ECN must immediately enter its locking/crossing quote or order. After posting its locking/crossing quote or order, the ECN may then cancel the Trade-or-Move Directed Order. It would be inconsistent with the rule for an ECN to send a Trade-or-Move Directed Order and then fail to enter a locking/crossing quote in an attempt to manipulate the market.

13. Q. What are an ECN's options after it has sent a Trade-or-Move Directed Order?

A. If **all** the recipients of a Trade-or-Move Directed Order sent by an ECN

trade in full or move their quotes, an ECN may enter a new quote or order, but it would not be a locking/crossing quote or order. If **all** the recipients of a Trade-or-Move Directed Order sent by an ECN trade in full and do not move their quotes, and the ECN still wants to lock/cross the market, the ECN must send another Trade-or-Move Directed Order. If after 10 seconds fewer than all recipients trade in full, the ECN must enter its locking or crossing quotation.

## Market Maker Obligations

14. Q. What are a market maker's obligations for entering a quote or order between 9:20:00 a.m. and 9:29:29 a.m., ET, that would lock or cross the market if displayed in NASDAQ during that period?

A. Except as specified above (with respect to the aggregate size of a Trade-or-Move Directed Order[s]), market makers' obligations with respect to Trade-or-Move will not change. If a market maker wishes to enter a quote/order that would lock or cross the market, it must enter the locking or crossing quote/order and then immediately send a Trade-or-Move Directed Order for the appropriate number of shares.

15. Q. If a market maker sends a Trade-or-Move Directed Order and the recipient does not respond to the message within 10 seconds, can the market maker cancel the Trade-or-Move Directed Order?

A. Yes. A market maker may cancel a Trade-or-Move Directed Order it sends if it has waited the full 10 seconds and the receiving market participant has

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not responded. (Refer to Question 20 below for further discussion.) A market maker also may cancel a Trade-or-Move Directed Order before 10 seconds elapse if the recipient moves its quote to a non-locking/non-crossing price or the market otherwise unlocks.

### **Trade-or-Move Obligations to Orders Below a Market Maker's or an ECN's Top of File in a Multiple Order Environment**

The following two questions address a market participant's obligations where a market participant is displaying multiple levels of attributable orders below the market participant's top of file. These questions address how Trade-or-Move operates in an environment where a market maker may have several levels of orders in the system that could be locked or crossed.

16. **Q. If a market maker has orders in the SuperMontage book and receives a Trade-or-Move Directed Order at its quoted price and it executes all shares at that price, what obligations does the market maker have?**

A. The market maker must do one of two things:

(1) If the market maker has orders or summary quotes at multiple price levels (*i.e.*, orders below its top of file), and the actively crossing market maker sends a Trade-or-Move Directed Order priced **at** the passively crossed market maker's top of file, the passively crossed market maker does not have to cancel or move those summary quotes or orders against which the Trade-or-Move Directed Order is **not** marketable; it only has to execute at the price and quantity of the inbound Trade-or-Move Directed Order or it has

to move. Thus, if a market maker receives a Trade-or-Move Directed Order priced at its top of file, it only has to trade in full with the Trade-or-Move Directed Order, even though the system will publish its next best quote or order that is then locked or crossed, once the order(s) at the top of file is(are) exhausted.

For example, MMB wants to cross at \$19.95, so it enters the \$19.95 quote and sends MMA a Trade-or-Move Directed Order to sell at \$20.00 for 10,000 shares. MMA has the following buy orders on its book: 1,000 shares at \$20.00; 5,000 shares at \$19.99; and 6,000 shares at \$19.98. The shares at \$19.99 and \$19.98 are attributable but not displayed because they are below the top of its file. MMB is only obligated to send a sell order for 10,000 shares to the quoted price it sees: MMA at \$20.00. MMA must execute the full 10,000 shares of the Trade-or-Move Directed Order to maintain its \$20 bid. If MMA does not fully execute the Trade-or-Move Directed Order, it may partially execute the order at \$20 and remove its trading interest at \$20, or it may remove its trading interest at \$20 altogether. MMA will re-appear at \$19.99 for 5,000 shares, but it has no obligation to send a Trade-or-Move Directed Order. At this point, either party to the cross can (but is not obligated to) send a Trade-or-Move Directed Order.

(2) If the market maker has orders or summary quotes at multiple price levels (*i.e.*, orders below its top of file) and the actively crossing market maker sends a Trade-or-Move Directed Order priced **better than** the passively crossed market maker's top of file, then the passively crossed market maker is



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obligated to trade in full against the incoming Trade-or-Move Directed Order **or** move to a price that is not locking/crossing.

For example, MMB wants to cross at \$19.95, so it enters the \$19.95 quote and sends MMA a Trade-or-Move Directed Order to sell at \$19.95 for 10,000 shares. MMA has the following buy orders on its book: 1,000 shares at \$20.00; 5,000 shares at \$19.99; and 6,000 shares at \$19.98. The shares at \$19.99 and \$19.98 are attributable but not displayed because they are below the top of its file. MMA is **obligated** to execute 1,000 shares at \$20.00; 5,000 shares at \$19.99; and 4,000 shares at \$19.98, *i.e.*, all prices against which the inbound Trade-or-Move Directed Order is marketable, up to the size of the inbound Trade-or-Move Directed Order (here, 10,000 shares). If MMA does not trade in full, MMA must cancel all orders and quotes that are crossed and move its quote to (or establish a new quote at) \$19.94 (an uncrossed/unlocked price).

17. Q. If a market maker is quoting only one price and does not have orders in the book and receives a Trade-or-Move Directed Order at its quoted price and it executes all shares at that price, what obligations does the market maker have?

A. Nothing changes under this scenario. For example, MMA is quoting at \$20.00 for 1,000 shares and MMC is quoting at \$19.99 for 1,000 shares. MMB wants to cross at \$19.95, and MMB sends MMA a Trade-or-Move Directed Order at \$20.00 for 5,000

shares and MMC a Trade-or-Move Directed Order at \$19.99 for 5,000 shares. Here both MMA and MMC would be required to trade 5,000 shares at \$20.00 and \$19.99 respectively **or** move their quotes to a price below \$19.95.

### **Interaction Between Trade-or-Move, SIZE, and the SuperMontage Open**

18. Q. If a market maker or ECN receives a Trade-or-Move Directed Order within the last 10 seconds before 9:29:30, ET (*i.e.*, at or after 9:29:20 a.m., ET), does the market maker or ECN still have the obligation to trade or move within 10 seconds?

A. A market participant continues to have an obligation to respond timely to a Trade-or-Move Directed Order sent after 9:29:20 a.m. and before 9:29:29 a.m., ET. As noted in Question 21 below, however, at and after 9:29:30 a.m., ET, the receiving market participant should not accept the Trade-or-Move Directed Order.

19. Q. How long is a market participant obligated to leave a Trade-or-Move Directed Order live before it may be cancelled?

A. A market participant generally is required to leave a Trade-or-Move Directed Order live for 10 seconds. As noted in Question 20 below, a market participant may cancel a Trade-or-Move Directed Order at any time after 9:29:30 a.m., ET.

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20. **Q. May a market maker or ECN cancel a Trade-or-Move Directed Order at or after 9:29:30 a.m., ET, that is still “open”?**

A. Yes. Once the 9:29:30 a.m., ET, opening process begins, a market participant may cancel outstanding Trade-or-Move Directed Orders. Note, however, that a Trade-or-Move Directed Order—by system operation—cannot be canceled for 5 seconds (i.e., the NASDAQ system will reject the cancellation unless the order has been live for 5 seconds). Thus, a market participant will have to wait 5 seconds after sending a Trade-or-Move Directed Order before a cancellation will be successfully processed by NASDAQ systems.

21. **Q. If a market maker locks or crosses the market at or after 9:29:25, ET, is the market maker required to send a Trade-or-Move Directed Order?**

A. Yes. However, since the SuperMontage opening process will unlock or uncross the market beginning at 9:29:30 a.m., ET, the recipient of a Trade-or-Move Directed Order may NOT accept a Trade-or-Move Directed Order at or after 9:29:30 a.m., ET. This is to ensure that the sender of a Trade-or-Move Directed Order does not receive an execution of the outstanding Trade-or-Move Directed Order while simultaneously receiving an execution of its locking/crossing quote through the SuperMontage opening process. (Note that this amends the guidance set forth in Question 2 to *NASD Notice to Members 00-29*, where NASD and NASDAQ explicitly state that an obligation to a Trade-or-Move Message carries over after the open; this will no longer be the case given the changes

to the SuperMontage Opening Process.) NASDAQ has submitted a proposed rule change to the SEC to establish that any trade executed after 9:29:30 a.m., ET, as a result of the receipt of a Trade-or-Move Directed Order may be broken (declared null and void) pursuant to the Clearly Erroneous Trade Rule (NASD Rule 11890) if a party submits an erroneous trade complaint.<sup>3</sup>

22. **Q. If an ECN wishes to lock or cross the market at or after 9:29:20 a.m., ET, what are its Trade-or-Move obligations?**

A. An ECN is required to send a Trade-or-Move Directed Order first, and wait 10 seconds before entering a locking or crossing quote. If the ECN does not receive a response by 9:29:29 a.m., ET, it may cancel the Trade-or-Move Directed Order and thereafter initiate a lock/cross. The system would resolve the resulting locked or crossed market at 9:29:30 a.m., ET (or thereafter) pursuant to the SuperMontage opening process.

23. **Q. If a market maker wishes to enter a quote or order into “SIZE” that would lock or cross another market participant between 9:20:00 a.m. and 9:29:29 a.m., ET, what are the market maker’s Trade-or-Move obligations? (See Question 25 for an ECN’s obligations.)**

A. A market maker that wishes to enter a locking or crossing quote or order into SIZE, must follow all rules that would be applicable to the entry of a locking or crossing quote or order under its own market participant identifier (MPID). Thus, a market maker wishing to lock or cross the market via SIZE during the Trade-or-Move period

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must, immediately after entering the locking or crossing quote/order into SIZE, send a Trade-or-Move Directed Order for the appropriate share amount to the market participant(s) it has locked or crossed or will lock or cross.

**24. Q. Does a market maker incur additional obligations by entering a locking or crossing quote or order into SIZE as opposed to its own MPID?**

A. Due to the anonymous nature of the SIZE MPID, and the resulting inability of other market participants to identify the entity with which to resolve a locked or crossed market, a market maker that elects to represent its trading interest in SIZE must comply with the following. If the market maker has locked/crossed the market using SIZE, it must send out the required Trade-or-Move Directed Order(s). If all recipients of a Trade-or-Move Directed Order trade in full and do not move their quotes to an unlocking/uncrossing position, a market maker that still wants to lock or cross the market via SIZE must send another Trade-or-Move Directed Order to the parties it has locked or crossed. A market maker that continues to actively lock or cross the market via SIZE must continue sending Trade-or-Move Directed Orders (every 10 seconds) until the locked or crossed market is resolved.

**25. Q. If an ECN wishes to enter a quote/order into SIZE that would lock or cross another market participant(s) between 9:20:00 a.m. and 9:29:29 a.m., ET, what are the ECN's Trade-or-Move obligations? (See Question 23 for a market maker's obligations.)**

A. An ECN wishing to actively lock or cross using the SIZE MIPD during the Trade-or-Move period must, before entering a locking or crossing quote or order into SIZE, send a Trade-or-Move Directed Order to the market participant(s) it will lock or cross. If the recipient trades in full with the message and does not move its quote to an unlocking or uncrossing position, the ECN that wishes to actively lock or cross the market via SIZE must continue to send Trade-or-Move Directed Orders every 10 seconds to the parties it wishes to lock or cross. The ECN must continue to send Trade-or-Move Directed Orders until the potential locked or crossed market is resolved.

**26. Q. What are the Trade-or-Move obligations of a market participant that wishes to lock or cross the SIZE MPID?**

A. Since SuperMontage does not currently have the capability to route Trade-or-Move Directed Orders to individual entities represented in SIZE, a market participant that wishes to lock or cross the SIZE MPID has no obligation under the Trade-or-Move Rule with respect to orders that reside in SIZE. The market participant retains all other Trade-or-Move obligations to interact with attributed quotes or orders that it has locked or crossed or that it will lock or cross.

**27. Q. What are the Trade-or-Move obligations of a market participant that has entered a quote or order into SIZE that is thereafter locked or crossed by another market participant?**

A. The Trade-or-Move Rule does not require the market participant whose

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quote or order is locked to send a Trade-or-Move Directed Order. Similarly, if a market participant enters an order into SIZE prior to 9:20 that locks/crosses, there is no obligation to send a Trade-or-Move Directed Order either before or after 9:20 a.m., E.T.

NASDAQ does believe, however, that parties have an ongoing responsibility to monitor those orders and take reasonable steps to attempt to interact with displayed quotes/orders that lock/cross those orders. NASDAQ will closely monitor, and refer for regulatory review, market participants that routinely enter orders in SIZE and take no action to attempt to execute such orders despite clear indicia that other market participants are willing to execute at prices that would satisfy them.

## Endnotes

- 1 Securities Exchange Act Release No. 45990 (May 28, 2002), 67 FR 38535 (June 4, 2002) (File No. SR-NASD-2000-76).
- 2 Securities Exchange Act Release No. 46410 (August 23, 2002), 67 FR 55897 (August 30, 2002) (File No. SR-NASD-2002-56).
- 3 File No. SR-NASD-2002-123 (filed September 18, 2002).

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## ATTACHMENT B

### Text of Amended Rule (reflecting amendments to the Trade-or-Move Rule and the SuperMontage Opening Process)

#### 4613. Character of Quotations

(a) through (d) No Change.

##### (e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in NASDAQ during normal business hours if:

(A) through (B) No Change.

(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(i) Locked/Crossed Market Prior to 9:20 a.m. — For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a market maker that is a party to a lock/cross because the market maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker ("party to a lock/cross") may, beginning at 9:20 a.m. Eastern Time, send a Directed Order of any size that is at the receiving market maker's quoted price ("Trade-or-Move Directed Order"). Exception: A market maker that is a party to a lock/cross may not send such an order to the SIZE MPID.

(ii) Locked/Crossed Market Between 9:20 and 9:29:29 a.m. —

(a) Before an ECN enters a quote that would lock or cross the market between 9:20 and 9:29:29 a.m. Eastern Time, the ECN must first send a Trade-or-Move Directed Order to the market maker or ECN whose quote it would lock or cross that is at or superior to the receiving market maker's or ECN's quoted price. An ECN that sends a Trade-or-Move Directed Order during these periods must then wait at least 10 seconds before entering a quote that would lock or cross the market. Exception: An ECN is not required to send such an order to the SIZE MPID.

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(b) If a market maker enters a quote that would lock or cross the market between 9:20 and 9:29:29 a.m. Eastern Time, the market maker must then immediately send a Trade-or-Move Directed Order to the market maker or ECN whose quote it would lock or cross that is at or superior to the receiving market maker's or ECN's quoted price. Exception: A market maker is not required to send such an order to the SIZE MPID.

(c) If any market participant enters a quote that would lock or cross the market between 9:29:30 and 9:29:59, that quote will be processed as set forth in Rule 4710(b)(3)(B).

(iii) (a) In the case of securities included in the Nasdaq 100 Index or the S&P 400 Index, a Trade-or-Move Directed Order must be for at least 10,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Directed Order and the aggregate size of all such messages must be for at least 10,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Directed Order(s) in an amount equal to the agency order, even if that order is for less than 10,000 shares.

(b) In the case of all other securities, a Trade-or-Move Directed Order must be for at least 5,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Directed Order and the aggregate size of all such orders must be for at least 5,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Directed Order(s) in an amount equal to the agency order, even if that order is for less than 5,000 shares.

(iv) A market maker that receives a Trade-or-Move Directed Order must, within 10 seconds of receiving such message, either fill the incoming Trade-or-Move Directed Order for the full size of the order, or move its bid down (offer up) by a quotation increment that restores or maintains an unlocked/uncrossed market.

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(v) A market maker that sends a Trade-or-Move Directed Order pursuant to subparagraphs (e)(1)(C)(i) or (e)(1)(C)(ii)(b) of this rule, or an ECN that sends a Trade-or-Move Directed Order pursuant to subparagraph (e)(1)(C)(ii)(a) of this rule, must append to the order a NASDAQ-provided symbol indicating that it is a Trade-or-Move Directed Order.

(vi) No Change.

(2) No Change.

(3) Except as indicated in subsection (1)(C)(ii), for purposes of this rule, the term “market maker” shall include:

(A) through (D) No Change.