

2. Risk Management. Under the proposal, Nasdaq is principally relying on the role of the National Securities Clearing Corporation (“NSCC”) as guarantor of transaction settlement to mediate any risk a firm would incur by not **knowing** their trading counterparty. The identities of the counterparties on fully anonymous trades will be submitted to NSCC in real time. The fact remains, however, that a window exists from the time of a transaction until midnight of T+1, which is when NSCC officially steps in as guarantor: where a firm faces exposure that their anonymous counterparty may fail to settle a transaction. This begs the question whether the service Nasdaq proposes to offer is worth such incremental systemic risk, and whether is it appropriate for Nasdaq to assume fiscal responsibility for such trades, like ECNs and other providers of anonymous transaction services currently do.

3. Operational Administration. **Transactions involving** broker-dealers that are completely anonymous from one another could create difficulties in resolving erroneous and/or disputed trades, which typically are resolved through direct **broker-to-broker** communication. While Nasdaq states it will provide a “help desk” to coordinate resolution of such issues, the Commission should thoroughly review the resources Nasdaq will dedicate to this effort **and** the procedures put in place to govern the administration of this function, so that Nasdaq can **fulfill** its Exchange Act responsibilities to prevent unfair discrimination by Nasdaq in the resolution of disputes among **SIZE users**.⁷

While Nasdaq is free to evolve SuperMontage as it sees fit, it must do so in a manner consistent with its regulatory responsibilities and its general duty to preserve fair and orderly markets. The complete removal of counterparty identity from the trade-execution process is a significant modification of modern market operational practices, and should be approved only when the Commission is completely satisfied that all direct and ancillary issues raised by the Proposing Release have been addressed,

Please do not hesitate to contact me at (917) 637-2560 regarding this letter, **or** how Brut can assist the Commission and the **staff** in evaluating **these** issues in the future.

Sincerely yours,

A handwritten signature in black ink, appearing to read "William O'Brien". There is a small number "3" written above the signature.

William O'Brien
Chief Operating Officer
Brut, LLC

⁵ See **NSCC Rules and Procedures**, Addendum K (July 1, 2003).

⁶ See **Proposing Release**, *supra* n.2, at 39606 n.11.

⁷ See Exchange Act Section 15A(b)(6).

Jonathan G. Katz, Secretary

July 29, 2003

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cc: The Hon. William Donaldson, Chairman
The Hon. Cynthia Glassman, Commissioner
The Hon. Paul Atkins, Commissioner
The Hon. Roel Campos, Commissioner
The Hon. Harvey Goldschmid, Commissioner
Giovanni Prezioso, General Counsel
Annette Nazareth, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation
Lawrence Harris, Chief Economist
Terri Evans, Assistant Director, Division of Market Regulation
Steve Williams, Assistant Director, Division of Market Regulation
Katherine A. England, Assistant Director, Division of Market Regulation
John Polise, Senior Special Counsel, Division of Market Regulation
Robert Greifeld, CEO and President, Nasdaq Stock Market, Inc.
Edward Knight, Executive Vice President and General Counsel, Nasdaq Stock Market, Inc.