



July 24, 2003

Via e-mail: rule-comments@sec.gov

U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609

Attention: Mr. Jonathan G. Katz, Secretary

**Re: SEC File No. SR-NASD-2003-85**

Ladies and Gentlemen:

Bloomberg Tradebook LLC (“Bloomberg Tradebook”)<sup>1</sup> appreciates the opportunity to comment, in response to the request by the Securities and Exchange Commission (the “Commission”) in Securities Exchange Act Release No. 48088 (June 25, 2003) (the

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<sup>1</sup> Bloomberg Tradebook operates a proprietary electronic communications network (“ECN”) pursuant to Regulation ATS under the Securities Exchange Act of 1934 (the “Exchange Act”) and a no-action letter from the staff of the Commission’s Division of Market Regulation. Letter from Dr. Richard R. Lindsey to Roger D. Blanc (January 17, 1997), SEC No-Action Letter, 1997 SEC No-Act. LEXIS 55 (the “Bloomberg Tradebook No-Action Letter”). The Bloomberg Tradebook No-Action Letter has subsequently been extended on several occasions. Bloomberg Tradebook is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. (the “NASD”). Bloomberg Tradebook offers its institutional and broker-dealer customers, and other broker-dealers that access the Tradebook system via private connections and Nasdaq’s systems, the opportunity to buy and sell equity securities through use of the BLOOMBERG PROFESSIONAL service (as defined below).

Bloomberg Tradebook is a wholly owned subsidiary of Bloomberg L.P. (“Bloomberg”). Bloomberg is engaged in the business of providing its customers with financial market information, news and analytics via its worldwide electronic network (the “BLOOMBERG PROFESSIONAL™ service”). Bloomberg also serves its broker-dealer and institutional customers’ communications needs and facilitates their transaction of business by offering various additional services, including electronic messaging, non-anonymous offerings, bids wanted and equity order routing and indications of interest, and linkages to certain exchanges within and outside the United States. Approximately two million text messages and transaction messages involving billions of dollars of securities are sent and received by Bloomberg customers across the BLOOMBERG PROFESSIONAL service every business day. In addition, we expect in the future to provide access to additional points of liquidity as customer demand dictates.

“Proposing Release”) on the proposed rule change submitted by the National Association of Securities Dealers, Inc. (the “NASD”), through its wholly controlled subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), relating to a post-trade anonymity feature in SuperMontage (the “Nasdaq Proposal”).

We support and indeed embrace the goals of the Nasdaq Proposal.<sup>2</sup> We are concerned, however, that the treatment of ECNs unnecessarily denies them the opportunity to use SuperMontage's facilities in the way all other market participants can use them. Under the Nasdaq Proposal, ECNs would not be able to post quotations under SIZE and have the ensuing trades remain anonymous to the order entry-firm. In the description of the Nasdaq Proposal in the Proposing Release, Nasdaq's rationale for treating ECNs differently is stated as follows:

Trades executed with these ECNs are processed differently because they have the discretion to reject trades with certain contra parties if the ECN is in dispute with the contra party concerning the ECN's quote access fee. Therefore, to provide fee-charging Order-Delivery ECNs with the opportunity to reject trades with certain members, Nasdaq must disclose each contra party's identity. Nasdaq believes that this process also will benefit members that execute trades with these ECNs because the members will be able to track the access fee charges accumulated with each ECN.

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<sup>2</sup> We point out, nonetheless, that the Nasdaq Proposal involves some new and possibly unwise financial risks for the market, risks ECNs themselves do not present. Nasdaq will provide anonymity for market participants and will not disclose the identities of their economic counterparties, which mimics what the ECNs do, but then Nasdaq will not stand behind its participants' trades during the critical two-day period, ending at midnight on T + 1 before NSCC assumes responsibility for the trades. That arrangement leaves SuperMontage participants, and the market in general, with systemic risk they do not today bear. NSCC's exposure does not vest until midnight of T + 1, which may give it ample time to hand back to the counterparty trades done by an insolvent broker-dealer, but market makers and other broker-dealers executing orders through SuperMontage will face the risk from the time of the trade until midnight of T + 1 that their economic counterparty, whose identity and financial situation they cannot know, will fail to complete the trade. And Nasdaq will not have any incentive to monitor the trading risks to which a market maker or other broker-dealer is exposing itself, and thus other market participants.

The Nasdaq Proposal is much unlike, for example, the New York Stock Exchange's SuperDOT system. The NYSE assigns a single specialist to each stock and the specialist stands in the middle of every trade in SuperDOT and maintains a membership with NSCC or a fully disclosed relationship with an NSCC member. Nasdaq's dealer marketplace has no such single mediator, so a firm entering orders into SuperMontage will be blind as to whom they have traded with. While Nasdaq states that it will provide help desk staff to coordinate insolvency-related problems, among the firms involved, NSCC and Nasdaq itself have no real financial stake in the trades from a risk-exposure standpoint, so one must question the sense of urgency and expertise such a disinterested party will have in resolving problems quickly and fairly. ECNs, in contrast, have clearing brokers who assess the risk of potential market participants and have their own direct obligations, backed by their entire net worth, to make good on every trade done through the ECN if a participant reneges or fails to complete the trade. Clearing firms, for their own economic preservation, exert an important discipline over their correspondents by surveilling their economic exposure on an intra-day basis. They remember, for example, that Adler Coleman Clearing Corporation was brought down by the insolvency of Hanover Sterling & Co., Ltd., one of its correspondents.

To preserve some degree of anonymity, while also accommodating the unique rights and needs of these ECNs, Nasdaq is proposing a rule that would prohibit fee-charging Order-Delivery ECNs from disclosing the identity of the member that submitted the Non-Attributable Quote/Order that decremented their Quote Order.

Proposing Release in text preceding n.17.

The Nasdaq Proposal treats ECNs less favorably than it treats market makers. It gives market makers post-trade anonymity when taking and posting liquidity. In contrast, the Nasdaq Proposal gives ECNs post-trade anonymity only when taking liquidity and not when posting liquidity.

If an ECN posts a quotation in SIZE and accepts an order and executes the trade, then the execution message from SuperMontage, to both the ECN and the order entry firm, reveals the identities of the counterparties to each. That compromises the very post-trade anonymity the Nasdaq Proposal is supposed to provide, which puts ECNs at a competitive disadvantage. We understand that Nasdaq had some internal discussions regarding the possibility of keeping the execution report anonymous, and of providing the order-entry firm with a post-trade ECN execution file disclosing how much the market maker traded with each ECN, but Nasdaq decided it was too much trouble. But that is exactly what is needed for the ECNs to have a level playing field. In short, such a solution is feasible, but Nasdaq decided it cannot be bothered.

As currently formulated, the Nasdaq Proposal discriminates unfairly against ECNs and imposes burdens on competition that are not necessary or appropriate, in contravention of Exchange Act Sections 15A(b)(6) and 15A(b)(9). We suggest the Nasdaq Proposal could and should be modified to provide for more appropriate treatment of ECNs, which could be done without derogating from Nasdaq's stated purposes in fashioning the proposal. Nasdaq could have all the same anonymity provisions in place while providing to the broker-dealer after settlement an aggregated total of fees it had accumulated through use of the ECN. In that way, the broker-dealer could reconcile its fee records. That would give ECNs the same post-trade anonymity provisions as are accorded market makers.

On a technical, point, Bloomberg Tradebook does not currently use the SIZE facility because SuperMontage does not provide a "locked/crossed" warning message, as SuperMontage always does for quotations entered by order-delivery ECNs under their own acronyms. We need to have such a warning to avoid the possibility of double execution. Without a locked/crossed warning message, the ECN's quotation will be treated as an order and executed automatically, but it may also be matched simultaneously or nearly simultaneously against a contra order within the ECN's own book, resulting in double execution. We have been requesting a modification to this protocol from Nasdaq for many months, and have been told that it will be addressed later this year. Nevertheless, it constitutes just another aspect of Nasdaq's discrimination against its ECN constituents. Nasdaq could accommodate this need with very little change to its systems protocol but thus far has elected not to do it.

We appreciate the opportunity to make our views known to the Commission and the staff and we hope that our letter is helpful. If members of the Commission or of the staff believe we may be of further assistance in these matters, please let us know.

Respectfully submitted,

BLOOMBERG TRADEBOOK LLC

By: *Kim Bang* by RDB

cc: The Hon. William H. Donaldson, Chairman  
The Hon. Paul S. Atkins, Commissioner  
The Hon. Cynthia A. Glassman, Commissioner  
The Hon. Harvey J. Goldschmid, Commissioner  
The Hon. Roel C. Campos, Commissioner  
Annette L. Nazareth, Esq., Director,  
Division of Market Regulation  
Robert L. D. Colby, Esq., Deputy Director,  
Division of Market Regulation  
Elizabeth K. King, Associate Director,  
Division of Market Regulation  
Michael A. Macchiaroli, Associate Director  
Division of Market Regulation  
Terry Lee Evans, Esq., Assistant Director  
Division of Market Regulation  
Mr. Stephen L. Williams, Economist  
Division of Market Regulation  
Lawrence E. Harris, Chief Economist  
Giovanni P. Prezioso, Esq., General Counsel