

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46357; File No. SR-NASD-2002-111]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities to Eliminate Volume Eligibility Thresholds

August 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 9, 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" or "SEC") 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 Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(c)(2) to modify Nasdaq's transaction credit pilot program for exchange-listed securities. Nasdaq will implement the proposed rule change on a retroactive basis, as of July 1, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

#### 7010. System Services

(a)-(b) No change.

(c)(1) No change.

(2) Exchange-Listed Securities Transaction Credit[.]

For a pilot period, [qualified] NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. [To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify

for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that] An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. [A qualified] An NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter, [starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and] ending with the calendar quarter starting on October 1, 2002.

(d)-(r) 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 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's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").<sup>3</sup> The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. InterMarket comprises the Computer Assisted Execution System ("CAES"), a system that facilitates the execution of trades in listed securities

between NASD members that participate in InterMarket, and the Intermarket Trading System ("ITS"), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.<sup>4</sup>

Nasdaq is proposing to modify the InterMarket Transaction Credit Pilot Program (the "Program") that it began in 1999.<sup>5</sup> Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association (the "CTA"), by providing a transaction credit to members who engage in OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also a tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs.<sup>6</sup>

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA ("Tape A"), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades ("Tape B"). Eligibility for transaction credits is based on concurrent quarterly trading activity.

Nasdaq is proposing to eliminate the requirement that a member print an average of 500 daily trades of Tape A securities during a quarter to qualify for Tape A sharing, as well as the comparable volume threshold for Tape B securities. Nasdaq originally included these thresholds in the Program because it believed that a member should

<sup>4</sup> See CAES/ITS User Guide, [www.intermarket.nasdaqtrader.com](http://www.intermarket.nasdaqtrader.com) at p.5.

<sup>5</sup> See Securities Exchange Act Release No. 41174 (Mar. 16, 1999), 64 FR 14034 (Mar. 23, 1999) (SR-NASD-99-13). The SEC issued notice of subsequent extensions of the Program. See Securities Exchange Act Release Nos. 42095 (Nov. 3, 1999), 64 FR 61680 (Nov. 12, 1999) (SR-NASD-99-59); 42672 (Apr. 12, 2000), 65 FR 21225 (Apr. 20, 2000) (SR-NASD-2000-10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR-NASD-2000-32); 43831 (Jan. 10, 2001), 66 FR 4882 (Jan. 18, 2001) (SR-NASD-2000-72); 44098 (Mar. 23, 2000), 66 FR 17462 (Mar. 30, 2001) (SR-NASD-01-15); 44734 (Aug. 22, 2001), 66 FR 4537 (Aug. 26, 2001) (SR-NASD-2001-42); 45273 (Jan. 14, 2002), 67 FR 2716 (Jan. 18, 2002) (SR-NASD-2001-92); and 46232 (July 19, 2002), 67 FR 48691 (July 25, 2002) (SR-NASD-2002-94).

<sup>6</sup> See Securities Exchange Act Release No. 38237 (Feb. 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR-CHX-97-01) and Securities Exchange Act Release No. 39395 (Dec. 3, 1997), 62 FR 65113 (Dec. 10, 1997) (SR-CSE-97-12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. See Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000) (SR-NASD-2000-32).

demonstrate a clear commitment to operating in the InterMarket by achieving the threshold levels of trading before being eligible for tape sharing. Nasdaq has now concluded that the thresholds should be eliminated, however, for a number of reasons. First, the advent of riskless principal trade reporting,<sup>7</sup> which often eliminates the need to report one part of a two-part transaction, has reduced the number of trades reported for a given level of transaction activity and thereby made the 500-trade threshold more difficult for certain participants to meet. Second, the tape sharing programs of Nasdaq's competitors, such as CSE and CHX, do not have similar threshold requirements. For these reasons, Nasdaq believes that the thresholds should be eliminated, so that the tape sharing program will be available to all members that participate in InterMarket, regardless of their level of activity.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,<sup>8</sup> which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The elimination of the volume threshold requirement for transaction credits will increase the number of market participants eligible for transaction credits, thereby lowering the cost of InterMarket transactions.

### *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

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 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 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 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-2002-111 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46361; File No. SR-NASD-2002-102]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System®**

August 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2002, 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. Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act,<sup>3</sup> which renders the rule effective upon the Commission's receipt of this filing. Nasdaq will begin assessing fees pursuant to the revised fee schedule beginning on August 1, 2002. 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 amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex"). Nasdaq will implement the proposed rule change on August 1, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

### **(r) Nasdaq Application of the Primex Auction System**

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

#### **(1) Transaction charges**

Execution services—for all participants:

- Order entry ..... No fee

<sup>7</sup> Securities Exchange Act Release No. 41606 (July 8, 1999); 64 FR 38226 (July 15, 1999) (SR-NASD-98-08) (approving riskless principal trade reporting for InterMarket); Securities Exchange Act Release No. 43469 (Oct. 20, 2000), 65 FR 64468 (Oct. 27, 2000) (SR-NASD-2000-60) (delaying implementation of riskless principal reporting rules until February 1, 2001).

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).