

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47857; File No. SR-NASD-2003-77]

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®

May 14, 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 April 30, 2003, 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. On May 2, 2003, Nasdaq filed a letter to correct a typographical error in the proposal.³ Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act,⁴ which renders the rule effective upon the Commission's receipt of this filing. Nasdaq began assessing fees pursuant to the revised fee schedule beginning on May 1, 2003. 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 May 1, 2003. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010(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.
 - Auction Response (per share, per execution). *—\$[.005] .003
 - Matching Rights—Primex Auction Market Makers (PAMMs) only:
 - 50 Percent Match—No fee.
 - Two-Cent Match (per share, per retained order—\$2.50 Maximum). ** —\$.0025
 - Revenue Sharing—PAMMs only.
 - Each order executed: ***— $\frac{1}{3}$ of transaction fee.
 - (2) Monthly Access fees [No change.]
- * * * * *

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.

* This fee applies to both Indications and "real-time" Responses. When two orders match directly, a fee is charged to the party that entered the second order.

** This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

*** Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis.

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

1. Purpose

The amendments modify NASD Rule 7010(r), which establishes the fee schedule for Primex. Specifically, the amendments reduce the auction response fee from \$.005 to \$.003 per execution, per share.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were established in 2000.⁵ Nasdaq represents that since that time transaction prices in the overall market have decreased. As a result, Nasdaq believes that the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the auction response fee.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable fees among members. Nasdaq believes the fee reduction recognizes the changes in pricing that have occurred in the market and are designed to make the fees for Primex competitive with other trading venues. Nasdaq represents that these fees will be charged consistently to all members that choose to use Primex.

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.

⁵ See Securities Exchange Act Release No. 45285 (January 15, 2002), 67 FR 3521 (January 24, 2002). In the filing establishing the original fee schedule for Primex, Nasdaq indicated it would not charge any fees during the initial few months Primex was operating, and that it would notify members through a Head Trader Alert when it would begin assessing fees. On July 31, 2002, Nasdaq filed a proposed rule change revising the original fee schedule for Primex. See Securities Exchange Act Release No. 46361 (August 15, 2002), 67 FR 54246 (August 21, 2002). Nasdaq began assessing fees on August 1, 2002 according to the revised fee schedule; fees were never charged under the original fee schedule.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(5).

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Eleni Constantine, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 2, 2003 ("Clarification Letter"). In the Clarification Letter, Nasdaq corrected a typographical error in a footnote that is not part of the text being amended regarding the revenue sharing payment schedule. Nasdaq stated that the revenue sharing amounts are paid on a monthly basis, not on a quarterly basis, as previously published in the *Federal Register*. See Securities Exchange Act Release No. 45285A (March 5, 2002), 67 FR 10962 (March 11, 2002). Thus, footnote * * * should read: "Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis." Nasdaq represents that the footnote reads this way in its Manual.

⁴ 15 U.S.C. 78s(b)(3)(A).

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder⁹ in that it establishes the fee schedule for the use of a Nasdaq system.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 No. SR-NASD-2003-77 should be submitted by June 11, 2003.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47873; File No. SR-NSCC-2002-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modifying NSCC Rule 15

May 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 20, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on December 24, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC Rule 15 to specify what additional information participants and applicants must file with NSCC regarding their financial responsibility and operational capability.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

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

The purpose of the proposed rule filing is to modify Section 2 of NSCC Rule 15, "Financial Responsibility and Operational Capability." The proposed rule filing specifically: (1) Codifies the

current practice that applicable members provide copies to NSCC of consolidated reports of condition and income (*i.e.*, "call reports"), (2) require broker-dealer members to provide copies to NSCC of their most recent audited financial statements within sixty days after their fiscal year end and non-broker-dealer members to provide copies to NSCC of their most recent audited financial statements within ninety days after their fiscal year end, (3) require members to file copies with NSCC of all Rule 17a-11 letters filed with the Commission, and (4) require members to file with NSCC copies of such filings as determined by NSCC from time to time which members are required to file pursuant to the Sarbanes-Oxley Act of 2002 and any amendments thereunder.³

Rule 15, Section 2 currently permits NSCC to examine the financial responsibility and operational capability of members and applicants and to require them to provide certain information to NSCC. The proposed rule change modifies Rule 15 to more specifically delineate other information that participants must file with NSCC.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁴ and the rules and regulations thereunder because it will assure the safeguarding of securities and funds in NSCC's custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁵ and Rule 19b-4(f)(1)⁶ thereunder because the proposed rule change constitutes an interpretation with respect to the administration and enforcement of an

³ Pub. L. 107-204, 116 Stat. 745 (2002).

⁴ 15 U.S.C. 78q(b)(3)(F).

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(1).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by NSCC.