

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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## 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>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).

<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).

• Auction Response (per share, per execution [—\$5.00 maximum]).*	\$ [.01].005
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: ***	1/3 of transaction fee
(2) Monthly Access fees	
<i>Software</i>	
• Workstation license or unique logon:	Per workstation logon:
Stations/logons 1–10 .....	\$200
Stations/logons 11–25 .....	\$100
Stations/logons 26 and above.	\$50
• Proprietary interface license:	Per license:
API specification .....	\$500
FIX (customized protocol).	\$500
<i>Network</i>	
• Dedicated line:	Per line:
256K .....	\$1,781
64K with non-guaranteed 256K burst capacity [primary with backup].	\$1,564
56K .....	\$712
Installation/Uninstall \$1,000 per Nasdaq Staff site visit	

\*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 quarterly basis.

\* \* \* \* \*

## 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

The amendments modify NASD Rule 7010(r), which establishes the fee schedule for Primex. Specifically, the amendments reduce the auction response fee from \$.01 to \$.005 per execution, per share, and remove the \$.005 maximum fee cap per execution. In addition, the amendments establish the fees for two additional bandwidth options Nasdaq will begin providing to members that access Primex.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were established in 2000.<sup>4</sup> Nasdaq represents that since that time transaction prices in the overall market have decreased and, as a result, the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the auction response fee. With the reduction in the auction response fee, Nasdaq also is eliminating the provision capping the per execution fee at \$.005. Nasdaq represents that the cap was intended to make Primex pricing competitive for the execution of large orders. However, with the new, lower per share charge, Nasdaq believes the pricing is competitive even without the cap.

This proposal also establishes the fees for two new bandwidth options for accessing Primex. Nasdaq currently provides a 64 kilobyte per second (“K”) connection that automatically increases to 256K if needed due to increased message traffic (“burst capacity”). The increase to 256K, however, is constrained, and may not be available, if other users are already using the burst capacity. The charge for this bandwidth option will remain unchanged. The two new bandwidth options will accommodate users with high message traffic and those with low message traffic.

To accommodate users with high message traffic, Nasdaq is offering a connection that provides a constant 256K capacity, as opposed to a burst capacity feature. The monthly charge for

this option will be \$1,781. Members that submit lower amounts of message traffic will have the option to use a 56K constant connection. The monthly charge for this option will be \$712.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>5</sup> in general and with section 15A(b)(5) of the Act,<sup>6</sup> 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. In addition, the fees for the new alternatives for connecting to Primex are based on the bandwidth provided and will be charged consistently to all members that choose the particular connection option.

### 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

Nasdaq has designated the proposed rule change as a fee change pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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

<sup>4</sup> 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. Nasdaq will begin assessing fees on August 1, 2002 according to the revised fee schedule, and will notify members accordingly. As such, fees were never charged under the original fee schedule.

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3.

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-2002-102 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-46351; File No. SR-NASD-2002-110)

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a New Registration Category for Proctors of In-Firm Delivery of the Regulatory Element of the Continuing Education Requirements

August 14, 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 8, 2002, the National Association of Securities Dealers, Inc. ("NASD") 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 the NASD. 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

The NASD proposes to establish NASD Rule 1043, a new registration category for proctors of in-firm delivery of the Regulatory Element of the NASD's continuing education requirements. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

1040. Registration of Assistant Representatives [-Order Processing] *and Proctors*

1041. Registration Requirements for *Assistant Representatives*

(a) through (c) No change.

1042. Restrictions for *Assistant Representatives*

(a) through (c) No change.

1043. *Proctors of In-Firm Delivery of Regulatory Element*

(a) *Any person associated with a member seeking to be designated as a Proctor under Rule 1120(a)(6)(E) for the purposes of in-firm delivery of the Regulatory Element shall be required to be registered pursuant to Rule 1120(a)(6)(E)(iii), but shall not be required to pass a Qualification Examination.*

(b) *Any person associated with a member may be designated as a Proctor upon approval of an Application for Registration pursuant to Article V, Section 2 of NASD's By-Laws. Any person whose sole registration is as a Proctor pursuant to this Rule 1043 shall not be qualified to function in any other area requiring registration with NASD.*

(c) *Nothing in this Rule 1043 shall prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor without being designated as such under these provisions.*

\* \* \* \* \*

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

In its filing with the Commission, the NASD 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. The NASD 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

The purpose of the proposed rule change is to establish a new registration category for proctors of in-firm delivery of the Regulatory Element of the NASD's continuing education requirements. The Regulatory Element requires all registered persons to participate in a prescribed computer-based training session within 120 days of their second registration anniversary date and every three years thereafter. The Regulatory Element focuses on compliance, regulatory and ethical standards.

NASD Rule 1120(a)(6) permits each member to administer the continuing education Regulatory Element program to their registered persons through a program delivered on the member's premises, provided that the member adheres to certain technology, administrative and regulatory standards. Among the requirements for in-firm delivery of the Regulatory Element is that the program sessions be proctored by an individual registered with a self-regulatory organization ("SRO") and supervised by a designated principal.

NASD Rule 1120(a)(6) was intended to ease the burden on members to meet their continuing education requirements. However, the NASD has observed that many members have chosen not to avail themselves of the in-firm delivery options. Members have informed the NASD that the registration requirement for proctors is one reason more members have not used in-firm delivery. Members either do not have registered persons available to act as proctors or do not want to commit resources needed to prepare a proctor for an exam-based registration. The Securities Industry/Regulatory Council on Continuing Education recommended that the SROs develop a means to allow proctors to be registered without taking a qualification examination.<sup>3</sup> The NASD supported that recommendation and believes this proposed rule change is an effective solution that makes in-firm delivery a more attractive and efficient option for members while maintaining the integrity of the program.

Importantly, while the proposed rule change would permit proctors to be registered without an exam, it would still require the proctors to submit an

<sup>3</sup> The Council includes 14 members representing a cross-section of securities firms and six SROs, including the NASD. The Council facilitates industry/regulatory coordination of the administration and future development of the Continuing Education Program.

<sup>7</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.