

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47692; File No. SR-NASD-2003-66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Rebate Certain Past Primex Auction System Logon Charges for Certain Participants

April 17, 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 2, 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 Nasdaq has prepared. 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 modify NASD rule 7010(r) to enable Nasdaq to waive all Primex Auction System ("Primex") logon charges for the period of August 2002 through November 2002 for those Primex participants that, in connection with their participation in Primex during that period, were customers of the Brass Service Bureau and Order Management System ("Brass"). Nasdaq will implement the proposed rule change as soon as practicable after the Commission approves it.

The text of the proposed rule change is below. Proposed new text is *italicized*.

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Rule 7010(r). Nasdaq Application of the Primex Auction SystemTM

(1) No change.

(2) No change.

(3) *Waiver of Logon Fees*

All monthly logon fees for the period of August 2002 through November 2002 are waived for those Primex Auction System participants that, in connection with their participation in the Primex Auction System during such period, were customers of the Brass Service Bureau and Order Management System.

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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

Certain Primex participants are also users of Brass. The Brass system is integrated with such participants' internal order management system, and these participants rely on Brass for routing their respective orders to Primex. Due to Brass' delay in completing the needed interfaces, participants that expected to use Brass for routing their Primex orders were unable to do so, yet they were being charged the Primex logon fees. The proposed rule change would waive the logon fees during the period August 2002 through November 2002 for the affected participants.

The proposed waiver would apply to all logon charges, including each participant's logons for access via Brass as well as such a participant's logons for direct access not involving Brass. Generally, participants that intend to route their Primex orders through Brass also maintain separate Primex logons for direct access via the Primex Workstation, which can be used in conjunction with the Brass service in order to view transactions in Primex. Such Primex Workstation logons were of limited utility to those participants that intended, but were unable to, access Primex through Brass during the August 2002 through November 2002 period. Consequently, Nasdaq believes that waiving all logon charges for the affected participants would be fair and equitable. However, the waiver would not apply to network charges, because such charges arose from Nasdaq's obligations to third party network providers, which Nasdaq incurred specifically for the benefit of the participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

provisions of section 15A of the Act,³ in general and with section 15A(b)(5) of the Act,⁴ in particular, which requires that the rules of the NASD provide for equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed waiver of certain Primex logon charges ensures that the Primex charges are allocated reasonably and equitably.

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.

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 NASD consents, the Commission will:

(A) By order approve the 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78o-3.

⁴ 15 U.S.C. 78o-3(b)(5).