

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 the Nasdaq. On May 16, 2003, the Nasdaq filed Amendment No. 1 to the proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Nasdaq proposes to amend NASD rules 5012 and 7010(r) to enable access to the Primex Auction System ("Primex") via the Internet and to specify the charges for such access.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in *brackets*.

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#### Rule 5012. Access

(a) No change.

(b) No change.

(c) The Application may be made available [through Nasdaq-provided network(s) via]:

(1) *through Nasdaq-provided network(s) via Primex Auction System Workstation Service;*

(2) *through Nasdaq-provided network(s) via an Application Programming Interface ("API"); [or]*

(3) *through Nasdaq-provided network(s) via a FIX protocol interface*]. Certain functionality of the Application also may be made available via Computer to Computer Interface (CTCI).; *or*

(4) *over the Internet, using Nasdaq-provided user interface. Certain functionality of the Application may be made available through Nasdaq-provided network(s) via Computer to Computer Interface (CTCI).*

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

(1) No change.

(2) Monthly Access Fees

#### SOFTWARE

Workstation license or unique logon	Per workstation logon
Stations/logons 1–10 .....	\$200

<sup>3</sup> See letter from Alex Kogan, Associate General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2003 ("Amendment No. 1"). In Amendment No. 1, the Nasdaq submitted a new Form 19b-4, which replaced the original filing in its entirety.

#### SOFTWARE—Continued

Workstation license or unique logon	Per workstation logon
Stations/logons 11–25 .....	\$100
Stations/logons 26 and above ..	\$50

Proprietary interface license	Per license
API specification .....	\$500
FIX (customized protocol) .....	\$500

#### NETWORK

Dedicated line	Per line
256K .....	\$1,781
64K with non-guaranteed 256K burst capacity .....	\$1,564
56K .....	\$712
Installation/Uninstall .....	<sup>1</sup> \$1,000
<i>Internet Access</i>	
<i>Logons 1–10 (per firm) .....</i>	<i>\$50</i>
<i>Logons 11 and up (per firm) .....</i>	<i>\$25</i>

<sup>1</sup> Per Nasdaq Staff site visit.

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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, the 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

##### a. Overview

Currently, any firm wishing to connect to Primex and take full advantage of its functionality must purchase an Auction Control Box ("ACB") server and maintain a dedicated T1 circuit between its premises and the Primex system on Nasdaq's premises. To provide firms with a lower cost full-access alternative, Nasdaq intends to introduce the option of accessing Primex through the Internet. Interested firms would be able to connect to Primex via their existing Internet link and would not need either to purchase an ACB server or maintain a separate dedicated circuit between

their own premises and Primex. The Internet access option is intended both to attract new participants to Primex and to provide additional flexibility of access for existing participants.

##### b. Internet Connectivity and Resulting Cost Savings

A participant wishing to connect to Primex over the Internet would need to obtain Internet access from an Internet Service Provider ("ISP") and a telecommunications circuit linking the participant's premises with the ISP's point of presence from a local telecommunications provider ("Telco"). Typically, a participant would use the same Telco circuit and ISP port for all of its Internet connectivity needs (including, but not limited to, connectivity with Primex). Consequently, the required bandwidth of the needed ISP port and Telco circuit, and the corresponding costs, would be dictated by each participant's specific overall Internet usage requirements, which includes applications unrelated to Primex (e.g., email, web access, etc.). However, Nasdaq expects that, at any given level of Primex usage, the cost of the portion of the total bandwidth of the ISP port and of the Telco circuit actually used for Primex access would be substantially lower than the cost of a dedicated line that would otherwise be required to link the participant's premises with the Primex server. The monthly logon fees that Nasdaq itself proposes to charge for Internet access to the Primex are also substantially lower than the current logon fees for Primex access via a dedicated line.

##### c. The Look and Feel Is Unchanged

Nasdaq represents that Primex users that choose to access Primex over the Internet will generally enjoy the same "look and feel" experience as the users of the existing dedicated circuit mode of access. Nasdaq will provide to interested users compact discs with the user interface software required for Internet access. Before a connection with the Primex server can be established, the user would need to install the provided interface software and then run it. The interface software would, in turn, prompt the user for certain identifying information (ID and password). Once the identifying information is entered correctly, a full connection is established, and the user sees essentially the same screen display as he/she would see when using a dedicated connection. All other screen displays will also be essentially the same.