

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, as amended, or

B. institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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-2003-57 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47930; File No. SR-NASD-2003-66]

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

May 27, 2003.

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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to rebate certain past Primex Auction System ("Primex") logon charges for certain participants. Specifically, Nasdaq proposes to modify NASD Rule 7010(r) to enable Nasdaq to waive all Primex logon charges for the period of August 2002 through November 2002 for participants who, in connection with their participation in Primex during that period, were customers of the Brass Service Bureau and Order Management System ("Brass").

The proposed rule change was published for comment in the **Federal Register** on April 24, 2003.³ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁴ Specifically, the Commission finds that the proposed rule change promotes the objectives of Section 15A(b)(5) of the Act⁵ which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that the proposed waiver of certain Primex logon charges for the named period is equitable because Primex participants, who are users of Brass, were unable to route orders to Primex and were therefore

effectively unable to use the full range of Primex services.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASD-2003-66) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47925; File No. SR-NASD-98-80]

Self-Regulatory Organizations; Order Granting Approval to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, and 5 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Two-Year Pilot Program Relating to the Issuance of Temporary Cease and Desist Orders

May 23, 2003.

On October 28, 1998, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² Under its proposal, NASD establishes procedures to enable it to issue temporary cease and desist orders. The proposed rule change and Amendment No. 1³ to the proposal were published for comment in the **Federal Register** on December 30, 1998.⁴ The Commission received five comment letters on the proposal.⁵ On May 17, 1999, August 19,

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The first amendment to the proposal included changes to the evidentiary standard and the tenure of a temporary cease and desist order. See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 15, 1998 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 40826 (December 22, 1998), 63 FR 71984. On December 22, 1998, the NASD submitted a written extension of time for the public comment period as Amendment No. 2. The amendment is not subject to notice and comment. See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated December 21, 1998.

⁵ See Letters to Jonathan G. Katz, Secretary,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47692 (April 17, 2003), 68 FR 20197 (April 24, 2003).

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(5).

¹⁹ 17 CFR 200.30-3(a)(12).