

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47943; File No. SR-NASD-2003-84]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System

May 29, 2003.

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 May 13, 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 23, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Nasdaq under section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the rule immediately effective upon filing with the Commission. Nasdaq plans to begin assessing fees pursuant to the revised fee schedule beginning on June 1, 2003. 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

Nasdaq proposes to amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex").

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Eleni Constantine, Office of General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 22, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made typographical corrections to the rule text originally submitted in the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 23, 2003, the date Nasdaq filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Nasdaq will make the new fees effective June 1, 2003.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and 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) [No change.]	
(2) Monthly Access fees.	
Software:	
Workstation license or unique logon:	Per workstation logon:
<i>Stations/logons 1 .....</i>	<i>No charge if firm uses a dedicated circuit</i>
<i>Stations/logons 2-11 .....</i>	<i>\$100</i>
<i>Stations/logons 11 and above.</i>	<i>\$50</i>
[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) Network:	\$500
Dedicated line:	Per line:
256K .....	\$1,781
64K with non-guaranteed 256K.	\$1,564
burst capacity .....	
56K .....	\$712
Installation/Uninstall .....	\$1,000 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 monthly access fee for workstation logons so that the first workstation per firm is free, workstations 2 to 11 are charged \$100 and workstations 11 and up are charged \$50.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were determined in 2000.<sup>6</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 workstation fee.

Customers choosing to connect to the Primex Auction System have several options including programming their own interface using Computer to Computer Interface (CTCI), Application Programming Interface (API) or FIX (a customized protocol), or using the Primex workstation available over a dedicated network.

Since Primex was launched in December 2001, the monthly charges for the Primex workstation logons have been as follows:

Workstation logons 1-10 (per firm)—\$200  
 Workstation logons 11-25 (per firm)—\$100  
 Workstation logons 26 and up—\$50

Since the product launch, firms have complained that the workstation charges are too high and a disincentive for participation in the system. Primex's current transaction charge structure is based on the interaction of orders and Predefined Relative Indications (PRIs) residing in the system. Although there are currently 40,000 to 50,000 orders flowing through the system on a daily basis, PRI submission has remained limited. The workstation is a user-friendly and easy way to submit PRIs into the system, and Primex and Nasdaq staff believe that the proposed reduction in logon charges will encourage more use of the workstation and PRIs.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent

<sup>6</sup> See Securities Exchange Act Release No. 45285 (Jan. 15, 2002), 67 FR 3521 (Jan. 24, 2002) (SR-NASD-2001-93). In this filing, which established 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 began assessing fees on August 1, 2002 according to a revised fee schedule. Thus, fees were never charged under the original fee schedule. See Securities Exchange Act Release No. 46361 (August 15, 2002), 67 FR 54246 (August 21, 2002) (SR-NASD-2002-102).