

section 15A of the Act⁴ and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act⁵ which requires, among other things, that the rules of the association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.⁶

The ability of NASD clearing members to adequately assess the risk of their correspondent firms is critical to the protection of investors and the public interest, as required by the Act. Therefore, the Commission finds that the proposed rule change is consistent with the Act because the proposal seeks to ensure that all NASD clearing members retain the ability to monitor the trading activities and risk exposures of their correspondent firms, either by using the ACT risk management program, or another risk management tool comparable to ACT's risk management program. The proposed rule change also fosters cooperation and coordination with persons engaged in the regulating, clearing, settling, and processing of information with respect to and facilitating transactions in securities because it ensures that NASD clearing members utilize a risk management tool that monitors the acceptable levels of credit and risk exposure for correspondent firms, which helps to ensure the rapid and reliable comparison and settlement of transactions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NYSE-2002-57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47191; File No. SR-NASD-2003-4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed rule Change by the National Association of Securities Dealers, Inc. Relating to the Primex Auction System®

January 15, 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 January 14, 2003, the National Association of Securities Dealers, Inc., 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 effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,³ and subparagraph (f)(2) of Rule 19b-5.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System® ("Primex" or "System") as a Pilot Trading System pursuant to Rule 19b-5 of the Act,⁵ until February 14, 2003, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of Rule 19b-5,⁶ Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

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 Section 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 Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in Paragraph (c)(2) of Rule 19b-5 of the Act.⁷ As such, Nasdaq was not required to file a proposed rule change under Rule 19b-4 of the Act⁸ as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of rule 19b-5, a system must comply with three criteria to maintain its status as a PTS.⁹ One such criteria is that, for each security traded in the PTS, the PTS can not trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex exceeded this threshold for many securities. Therefore Nasdaq filed a proposed rule change seeking permanent approval of Primex.¹⁰ Nasdaq also filed a proposed rule change to continue operating the System or up to six months while the Commission considered granting permanent approval.¹¹ This six-month period expired on October 31, 2002. On October 31, 2002, Nasdaq filed a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS until November 30, 2002.¹² On November 26, 2002, Nasdaq filed a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS

⁷ 17 CFR 240.19b-5(c)(2).

⁸ 17 CFR 240.19b-4.

⁹ Pursuant to Rule 129b-5(c)(92), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume, in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization.

¹⁰ Securities Exchange Act Release No. 45983 (May 23, 2002) 67 FR 38152 (May 31, 2002).

¹¹ Securities Exchange Act Release No. 45982 (May 23, 2002) 67 FR 38163 (May 31, 2002).

¹² Securities Exchange Act Release No. 46756 (October 31, 2002), 67 FR 68221 (November 8, 2002).

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-5(f)(2).

⁵ 17 CFR 240.19b-5.

⁶ 17 CFR 240.19b-4(f).